TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 14,643

JACOB RAU, PETITIONER,

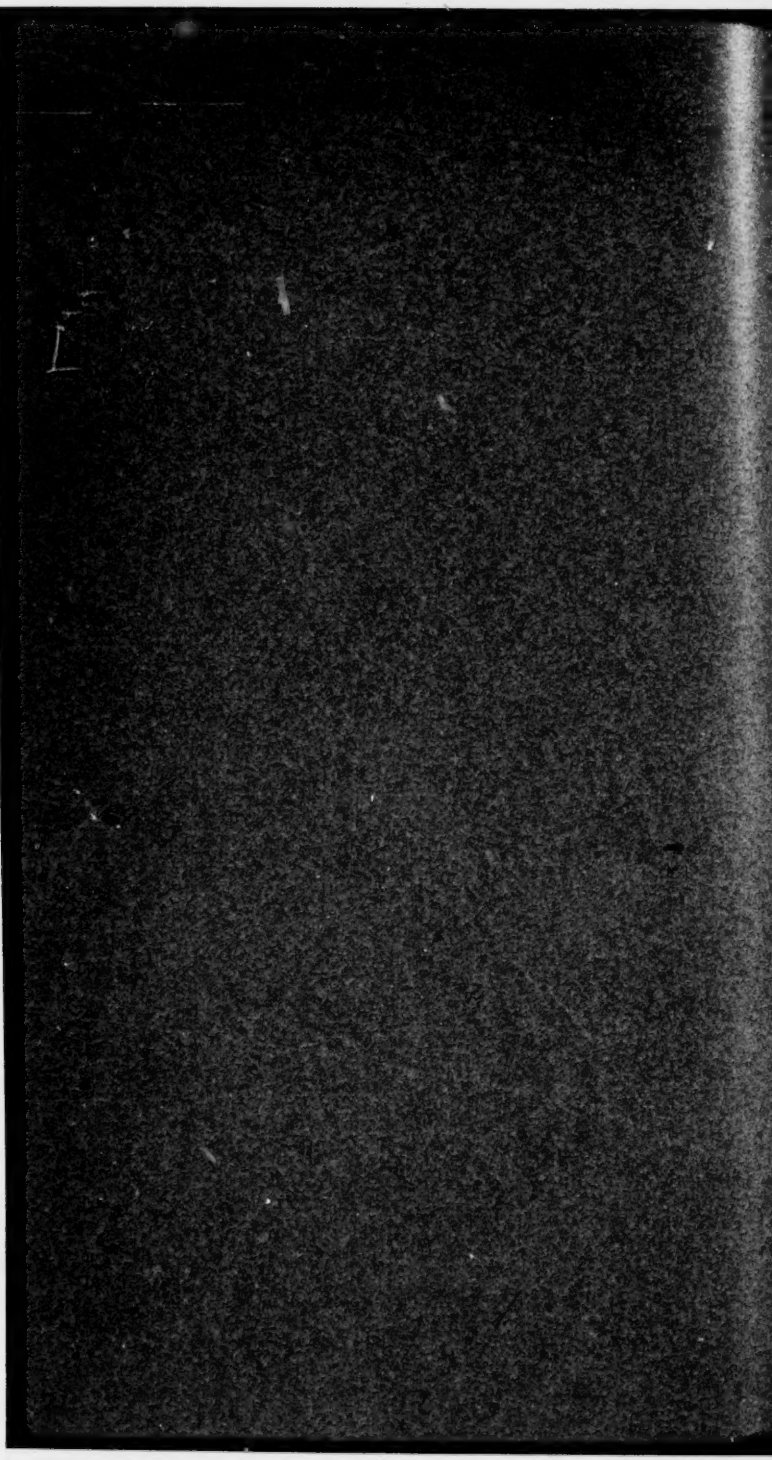
vs.

C. H. BOSWORTH, RECEIVER OF THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY, AND THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 20, 1903.
CERTIORARI AND RETURN FILED MAY 18, 1903.

(16,858.)



(16,858.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 285.

JACOB RAU, PETITIONER,

vs.

C. H. BOSWORTH, RECEIVER OF THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY, AND THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1896.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL. } No. 452.

In the matter of the intervening petition of Jacob Rau.

C. H. BOSWORTH, Receiver, etc., Appellant,
vs.
JACOB RAU, Appellee.

Mr. Bluford Wilson, Mr. Philip B. Warren, counsel for appellant; Mr. George R. Peck, Mr. Burton Hanson, Mr. George P. Carey, counsel for appellee.

Transcript of record filed September 13, 1897.
Printed record filed Sep. 22, 1897.

OLIVER T. MORTON, *Clerk.*

b In the Circuit Court of the United States for the Southern District of Illinois. In Chancery.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

1 *Pleas.*

Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. William J. Allen, district judge of said district, and in the absence of the Honorable William A. Woods, the Honorable James G. Jenkins, and the Honorable John W. Showalter, judges of the seventh judicial circuit, on the fifth day of April, in the January term of said court, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-first year.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY *et al.* } In Chancery. Consolidated Cause.

In the matter of the intervening petition of Jacob Rau, filed January 26, 1895.

Be it remembered, that heretofore, to wit: on the twenty-first day of September, in the year of our Lord one thousand eight hundred

and ninety-three, came the Mercantile Trust Company of the State of New York, by Messrs. Alexander & Green, its solicitors, and filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois, its bill for foreclosure of mortgage and appointment of receiver, together with the mortgage sought to be foreclosed, in cause of Mercantile Trust Company of New York against The Chicago, Peoria and St. Louis Railway Company, which said bill and mortgage are as follows, to wit:

2 *Bill of Complaint. Filed Sept.* 21, 1893.

In the Circuit Court of the United States for the Southern District of Illinois, in the Seventh Circuit. (In Equity.)

To the honorable judges of the circuit court of the United States for the southern district of Illinois for the seventh circuit, sitting in equity:

The Mercantile Trust Company, a corporation created by and existing under the laws of the State of New York, brings this, its bill of complaint, against the Chicago, Peoria and St. Louis Railway Company, a corporation created and existing under and by virtue of the laws of the State of Illinois, as hereinafter set forth.

I. And thereupon your orator complains and says that the Mercantile Trust Company is a corporation created by and existing under the laws of the State of New York, and having its principal office for the transaction of its business in the city of New York, in said State of New York, and is a citizen of said State of New York within the meaning of the laws fixing and determining the jurisdiction of this honorable court.

II. And your orator further shows upon its information and belief that on and prior to the first day of March, 1888, there existed a railroad corporation known as the Chicago, Peoria & St. Louis Railway Company, duly created by and existing under and by virtue of the laws of the State of Illinois, and possessed of and endowed with powers, rights, privileges, franchises and immunities granted by the laws of said State, and was and is a citizen of the said State of Illinois, within the meaning of the laws fixing and determining the jurisdiction of this honorable court, and was at all times duly authorized by law to construct, lease, purchase and operate a railway beginning in the city of Pekin, in the county of Tazewell, and terminating in the city of Jacksonville, in the county of Morgan, with a branch railway beginning in the city of Havana, in the county of Mason, and terminating in the city of Springfield, in the county of Sangamon; all in the said State of Illinois.

III. And your orator further shows unto your honors that heretofore and on or about the first day of March, 1888, the said Chicago, Peoria & St. Louis Railway Company, being thereunto duly authorized, by its president and secretary, and under its seal, made and executed its 1,500 bonds, known as first-mortgage five per cent. gold bonds, numbered consecutively from 1 to 1500 inclusive, each for

the sum of $1,000, bearing date on said first day of March,
3 1888, by the terms of which bonds the said company promised to pay to the bearer of each bond the sum of $1,000 United States gold coin, in the city of New York, on the first day of March, 1928, and also interest thereon at the rate of five per cent. per annum, payable semi-annually, in like gold coin, in the city of New York, upon the presentation and surrender of the coupons annexed to the said bonds, as they severally become due, on the first days of March and September; and that annexed to said bonds were coupons in substantially the following form:

The Chicago, Peoria & St. Louis Railway Company will pay to the bearer, in the city of New York, twenty-five dollars in United States gold coin, on the first day of ——, being six months' interest on bond number —.

—— ——, *Secretary.*

IV. And your orator further shows unto your honor, that on or about the said first day of March, in the year eighteen hundred and eighty-eight, for the purpose of securing the payment of the said bonds and interest, as the same should become due and payable, the said railway company made and executed a certain mortgage or trust deed, a copy of which mortgage or trust deed is hereto annexed and marked Schedule "A" and forms part of this bill of complaint. That the said mortgage or trust deed after reciting that the railway company desired to contract a loan for the purpose of constructing, purchasing and equipping its said railway, and that a meeting of stockholders of said railway company was held on the 20th day of September, 1887, pursuant to law, authorizing the making of the said loan and the execution of said mortgage or trust deed, and whereas the same was unanimously authorized by the board of directors of said railway company, the said Chicago, Peoria & St. Louis Railway Company, in order to secure the payment of said bonds and all the interest to accrue thereon, in consideration of the premises and of one dollar to the said railway company duly paid by your orator, at or before the ensealing and delivery of the said mortgage or trust deed, the receipt whereof was thereby acknowledged, granted, bargained and sold, conveyed, transferred, assigned and set over unto your orator, and its successors in trust, all and singular the said railway now belonging, or which might thereafter belong to, the said railway company, and which the said railway company was authorized by law to construct, purchase and operate, as follows:

"Beginning in the city of Pekin, and terminating in the city of Jacksonville, together with a branch railway beginning in the city of Havana, and terminating in the city of Springfield, all in
4 the State of Illinois, being about one hundred and twenty miles of railway, more or less; and also all rolling stock, equipment and machinery, connected or to be connected with said railway, and all franchises now held or hereafter to be acquired, by the said party of the first part, its successors or assigns, in connection therewith, including, in the premises hereby granted, all the

railways, ways and rights of way, and all the depot grounds and other lands, and all the tracks, bridges, viaducts, culverts, fences, and other structures, and all the depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings, and all machine shops and other shops, held or acquired, and which shall be held or acquired for use upon the aforesaid line of railway, or in connection with the business thereof; and including also all the locomotives, tenders, passenger, baggage and freight and other cars, and all the rolling stock and equipment, and all the machinery, tools, implements, fuel and materials for constructing, operating, repairing or replacing the said railway, or the equipments or appurtenances of the said railway, now held or hereafter to be acquired by the said party of the first part, together with all and singular the tenements, hereditaments and appurtenances of the said railway and premises, or any part thereof belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and any and every part and parcel thereof, with the appurtenances, and all books of account and vouchers kept and to be kept by the said party of the first part, which the said party of the first part now holds or shall hereafter acquire, and also twenty-five hundred shares of the capital stock of the Peoria & Pekin Union Railway Company, amounting to two hundred and fifty thousand dollars, par value. To have and to hold the said railway and premises, and all the franchises and property hereinbefore described, unto the said party of the second part, and its successors in trust, forever. But in trust, nevertheless, for the uses and purposes, and with and subject to the powers, agreements and conditions hereinafter in that behalf mentioned and set forth."

It was further agreed, in and by the said mortgage or trust deed, that the said railway company should make and deliver unto your orator, and your orator should certify or countersign bonds of the said railway company to an amount not exceeding fifteen hundred thousand dollars at par, which bonds should be certified and delivered to the said railway company by your orator.

V. And your orator avers and alleges that said bonds, to the amount of fifteen hundred thousand dollars, were delivered to and certified by your orator, and have been issued for value and sold by said defendant to various individuals and firms, who are two numerous to be made parties to this bill of complaint.

VI. It was further agreed, in and by said mortgage or trust deed, that until default should be made by the railway company, or its successors or assigns, in the payment of the principal or interest of said bonds, the said railway company should be suffered and permitted to remain in the actual possession of the said railway and premises. It was further covenanted and agreed that the said railway company should keep said property so mortgaged, free from

all liens which might in any way become a prior lien to said mortgage or trust deed, or impair the liens of your orator.

VII. It was further agreed that your orator should have reasonable compensation for any services which it might thereafter render in the trust thereby created, to be paid by the said railway company; and your orator prays to refer to said mortgage or trust deed, which is hereto annexed and made part of this bill of complaint for the other terms of said mortgage or trust deed.

VIII. And your orator further shows unto your honors that on the first day of September, 1893, there became due and payable, and accruing upon the bonds secured by said mortgage or deed of trust, and then actually outstanding, the semi-annual installment of interest, evidenced by the coupons attached to said bonds, amounting to the sum of $37,500; that default was made in the payment of the interest on said bonds, and said installment and interest accruing on said bonds as aforesaid; that the said railway company wholly failed, omitted and refused to pay the said installment of interest, and to pay the interest mentioned and provided for in the said coupons due on said last-mentioned day, or upon any of them, but thereon wholly made default; that said coupons were on that day actually presented for payment at the place where the same were and are payable, to wit, in the city of New York, and payment thereof was demanded and refused, and such default and failure to pay still continues.

IX. Your orator further shows unto your honors that the holders of a large amount in value of said general consolidated mortgage bonds now actually outstanding have in writing requested your orator to enforce the remedies provided in said mortgage or trust deed.

X. And your orator further shows unto your honors that it is informed and believes that the said railway company is insolvent, and unable to pay its floating debt and current and present accruing indebtedness.

XI. Your orator further shows that the said mortgaged
6 property is insufficient and inadequate security for the payment of the outstanding bonds secured by the said mortgage; that there is danger that the said property be sold under judgments, and that the property and lines of said company may be separated and broken up, and the earning capacity destroyed or impaired by the contests of creditors for conflicting claims, and the mortgaged premises wasted and depleted.

XII. Your orator further shows unto your honors that no proceedings at law have been had, nor any suit or action commenced by or on behalf of your orators, or any holder of any of the bonds of the company secured by the mortgage aforesaid, for any interest unpaid or accrued thereon, except only this action.

In consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the strict rules of the common law, and *are* only relievable in a court of equity, where matters of this kind are properly cognizable and relievable,

Your orator therefore prays the aid of this honorable court, and

that the said mortgage or deed of trust may be decreed to be a lien upon all the property mentioned and described therein, and upon all the property, real, personal or mixed, rights, franchises, lands, titles, railroads, branches, extensions, tolls incomes, rents and issues of the said railway company, described in the said mortgage or trust deed, within the jurisdiction of this honorable court, and that the said railway company may be decreed to pay unto your orator and the other bondholders under aforesaid mortgage or deed of trust all arrears of interest now due, or that may hereafter become due and payable upon said bonds, together with all the costs and expenses in this behalf incurred and expended. And in default thereof that the said defendant above named, and all persons claiming under it, may be forever barred and foreclosed of and from all equity of redemption and claim of in and to the said mortgaged premises, and every part and parcel thereof, and that all and singular the said mortgaged premises, within the jurisdiction of this honorable court, with the appurtenances, property and effects, rights, immunities and franchises in the said mortgage mentioned, may be sold under a decree of this honorable court, and that out of the money arising from the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorneys' and counsel fees, and the reasonable charges of your orator for services rendered as trustee and for all expenses incurred by it in the premises, and all payments which may be made for taxes or assessments on the said premises, or any part thereof, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid,
7 whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest.

And your orator further prays that an account may be taken of the bonds secured by the said mortgage, and of the amount due on said bonds for principal and interest, or either; and the names of the lawful holders thereof may be ascertained.

And your orator further prays that a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises and immunities of the said railway company, and its tolls, incomes, rents and issues, and of all other property included in and covered by the said mortgage within the jurisdiction of this honorable court, and that the defendants be decreed to make such transfer or conveyances to such receiver, and to the purchasers of said property at any sale as aforesaid, as may be necessary and proper to put them, or either of them, in possession and control of said property.

And your orator further prays that a writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case

made and provided, directing, commanding, enjoining and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling and disposing of any of the property mentioned in and covered by the said mortgage, or from taking possession of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage; and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of injunction, issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage. And may it please your honors to grant unto your orator a subpœna of
8 the United States of America issuing out of and under the seal of this honorable court, directed to The Chicago, Peoria and St. Louis Railway Company, the defendant, therein and thereby commanding it, on a day certain therein to be named, and under a certain penalty to be and appear before this honorable court then and there to answer (but not under oath), all and singular the premises, and to stand to, perform and abide by the said order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

THE MERCANTILE TRUST COMPANY,
By EDW. L. MONTGOMERY, *V. Pres't.*
[SEAL.] ALEXANDER & GREEN,
Solicitors for Complainant.

CHARLES B. ALEXANDER,
WILLIAM D. GUTHRIE,
Of Counsel.

Affidavit of Edward L. Montgomery.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Edward L. Montgomery, being duly sworn, says:

That he is the vice-president of The Mercantile Trust Company, the complainant in the foregoing bill of complaint, that he has read the foregoing bill of complaint, and knows the contents thereof; that the allegations therein contained, as far as they relate to his own acts, are true, and as far as they relate to the acts of others, he believes them to be true.

That in regard to all matters and things in the foregoing bill of complaint alleged, which are not within the personal knowledge of this deponent, the deponent has been fully informed, and he believes the same are true.

EDW. L. MONTGOMERY.

Sworn to before me this 19th day of September, 1893.

JOSEPH M. DENEL, [SEAL.]
U. S. Commissioner for the Southern
[SEAL.] *District of New York.*

(Indorsed:) Filed September 21, 1893. James T. Jones, clerk.

9 EXHIBIT A.

Mortgage.

This indenture, made the first day of March, in the year of our Lord one thousand eight hundred and eighty-eight, between the Chicago, Peoria and St. Louis Railway Company, a corporation of the State of Illinois, of the first part, and the Mercantile Trust Company of New York City, trustee, of the second part, witnesseth that:

Whereas, the said party of the first part is duly authorized by law to construct, lease, purchase and operate a railway beginning in the city of Pekin, in the county of Tazewell, and terminating in the city of Jacksonville, in the county of Morgan, with a branch railway beginning in the city of Havana, in the county of Mason, and terminating in the city of Springfield, in the county of Sangamon, all in the State of Illinois.

And whereas, the said party of the first part desires to contract a loan for the purpose of constructing, purchasing and equipping its said railway.

And whereas, at a meeting of the stockholders of said railway company held on the 20th day of September, A. D. 1887, pursuant to law, resolutions were passed by a vote of more than three-fourths of the outstanding stock of said company, whereby the board of directors was authorized, for the purpose of constructing, purchasing and equipping its railway, to contract for a loan, and to secure the payment of the same by mortgage of its corporate property and franchises acquired and to be acquired.

And whereas, at a meeting subsequently held, a quorum being present, the board of directors of said company, by resolution unanimously adopted, authorized the president of said company to negotiate a loan as proposed by said stockholders, as aforesaid.

And whereas, in pursuance of the power and authority duly vested in it, the said party of the first part, in order to defray its obligations in connection with the construction, purchase and equipment of said railway, is about to issue a series of bonds, the aggregate amount whereof to be at any time outstanding is limited to $1,500,000 in said bonds, at par, which said bonds shall be of like tenor and date, and for $1,000 each, and be payable in forty years

from date in gold coin of the United States of America, at the city of New York, and bear interest at the rate of five per cent. per annum, payable semi-annually, in the like gold coin, at the said city of New York, which payment of interest shall in all cases be made without deduction for State or United States taxes.

10 And whereas, the said bonds are, or are to be, all of like tenor and date, and in substantially the following form:

No. —. $1,000.

"The Chicago, Peoria & St. Louis Railway Company"

First Mortgage Five per Cent. Gold Bond.

The Chicago, Peoria & St. Louis Railway Company, for value received, hereby acknowledges itself indebted to the bearer in the sum of one thousand dollars in United States gold coin which indebtedness it promises to pay on the first day of March, A. D. 1928, in the city of New York, with interest thereon from the first day of March, A. D. 1888, at the rate of five per cent. per annum, payable semi-annually in the city of New York, on the presentation and surrender of the annexed coupons as they severally become due. If the obligor or its successors shall make default in the payment of the semi-annual interest on this bond for six months from the day it becomes due, then, without demand or notice, the whole principal thereof shall become due and payable, and may at once be enforced against this company, or its successors.

This bond is one of a series of similar bonds issued and to be issued from time to time by said railway company, the aggregate amount whereof to be at any time outstanding is limited to fifteen hundred thousand dollars in said bonds, at par; and the payment of this bond, in common with the other bonds of said series, is secured by a deed of trust or mortgage, bearing even date herewith, and conveying to the Mercantile Trust Company of New York, trustee, all and singular the Chicago, Peoria & St. Louis railway, beginning in the city of Pekin and terminating in the city of Jacksonville, with a branch railway beginning in the city of Havana and terminating in the city of Springfield, all in the State of Illinois, together with the equipments and appurtenances of the said railway, and all rights, privileges and franchises thereunto pertaining.

This bond shall not be valid or obligatory until the certificate authenticating the same, which is endorsed hereon, shall have been duly signed by the said trustee.

In witness whereof, the said railway company has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of the president and secretary, and has likewise caused the signature of the secretary to be affixed to the several coupons hereunto annexed, at the city of Jacksonville, in the State of Illinois, this first day of March, A. D. 1888.

"THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY,

[SEAL.] By —— ——, *President*,

—— ——, *Secretary.*"

11 STATE OF ILLINOIS.

UNITED STATES OF AMERICA.

"Trustee's Certificate."

The Mercantile Trust Company of New York hereby certifies that this bond is one of a series of bonds issued under the within-mentioned mortgage or deed of trust.

THE MERCANTILE TRUST COMPANY, *Trustee*,
By —— ——, *President.*

And, whereas, each of the said bonds has coupons thereto annexed, representing the several installments of interest to become due thereon, and said coupons bear the engraved signature of the secretary of said company, and are in substantially the following form:

(*Form of Coupon.*)

The Chicago, Peoria & St. Louis Railway Company will pay to the bearer, in the city of N York, twenty-five dollars in United States gold coin on the first day of ——, 1—, being six months' interest on bond number —.

—— ——, *Secretary.*

And, whereas, it is the true intent and meaning of these presents that each and all of the said bonds, whether now executed or hereafter to be executed, shall be equally secured to be paid by these presents:

Now, therefore, this indenture witnesseth that the said party of the first part, in order the better to secure the payment of said bonds and all of the interest to accrue thereon, and for and in consideration of the premises, and of the sum of one dollar to the party of the first part duly paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain, sell, convey, transfer, assign and set over unto said party of the second part, and its successors in trust, all and singular the said railway now belonging, and which may hereafter belong to the said party of the first
12 part, and which the said party of the first part is by law authorized to construct, purchase and operate, beginning in the city of Pekin and terminating in the city of Jacksonville, together with a branch railway beginning in the city of Havana and terminating in the city of Springfield, all in the State of Illinois, being about one hundred and twenty miles of railway, more or less; and also all rolling stock, equipment and machinery connected or to be connected with said railway, and all franchises now held or hereafter to be acquired by the said party of the first part, its successors or assigns, in connection therewith, including in the premises hereby granted all the railways, ways and rights of way, and all the depot grounds and other lands, and all the t-acks, bridges, viaducts, cul-

verts, fences and other structures, and all the depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses and other buildings, and all machine shops and other shops held or acquired, and which shall be held and acquired for use upon the aforesaid line of railway, or in connection with the business thereof, and including also all the locomotives, tenders, passenger, baggage, freight and other cars, and all the rolling stock and equipment, and all the machinery, tools, implements, fuel and materials for constructing, operating, repairing or replacing the said railway, or the equipments or appurtenances of the said railway now held or hereafter to be acquired by the said party of the first part, together with all and singular the tenements, hereditaments and appurtenances to the said railway and premises, or any part thereof, belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in and to the same, and any and every part and parcel thereof, with the appurtenances, and all books of account and vouchers kept and to be kept by the said party of the first part, which the said party of the first part now holds or shall hereafter acquire, and also twenty-five hundred shares of the capital stock of the Peoria & Pekin Union Railway Company, amounting to two hundred and fifty thousand dollars, par value. To have and to hold the said railway and premises and all the franchises and property hereinbefore described unto the said party of the second part and its successors in trust forever. But in trust, nevertheless, for the uses and purposes and with and subject to the powers, agreements and conditions hereinafter in that behalf mentioned and set forth.

And this indenture further witnesseth, that for the consideration aforesaid, and in order the better and more effectually to secure the payment of said bonds, and of all interest to accrue thereon,
13 the said party of the first part has covenanted, promised, granted and agreed to and with the said party of the second part, and its successors as follows, to wit:

Article first. The party of the first part shall make, execute and deliver unto the said party of the second part, and the said party of the second part shall certify or countersign bonds of the party of the first part intended to be secured hereby to an amount not exceeding fifteen hundred thousand dollars ($1,500,000) at par, which bonds shall be certified and delivered to the party of the first part by the party of the second part.

Article second. Until default shall be made by the said party of the first part, its successors or assigns, in the payment of interest or principal of said bonds, or in the due observance of the covenants and agreements hereinafter contained on the part and behalf of the said party of the first part, the said party of the first part, its successors and assigns, shall be suffered and permitted to remain in the actual possession of said railway and premises, and to exercise the franchises and rights relating thereto, and to collect, receive and

use revenues and profits thereof in any manner which will not impair the lien created by these presents.

And the said party of the first part hereby covenants, promises and agrees to and with the said party of the second part and its successors, that the said party of the first part, its successors and assigns, remaining in the possession of the said railway and premises, shall and will keep the said railway in good order and safe running condition, and shall and will from time to time pay and discharge all taxes, assessments and government charges, which may be lawfully imposed upon the said railway and premises, or upon any part thereof, and the lien of which might or could be held to be prior to the lien of these presents, so that the priority of these presents may be duly preserved, and that the said party of the first part will not do or suffer any act or thing whatsoever, whereby the lien hereof may or can be impaired, until the said bonds and all interest thereon shall be fully paid and satisfied.

Article third. In case default shall be made in the payment of any semi-annual installment of interest which may accrue upon the said bonds or upon any of them, when such interest shall become due and be demanded, and such interest or any part thereof, shall remain unpaid and in arrears for the period of six months, or in case default shall be made in the due observance and performance of the covenant of further assurance hereinafter set forth, or in the payment of any taxes, assessments or other governmental charges, which may be lawfully levied or imposed upon the said railway and premises, or upon any part thereof, and either of said last-mentioned defaults shall continue for the period of six months,
14 or in case default shall be made in the payment of the principal of said bonds, or any one of them, then, and in any and every such case of default, it shall be lawful for the said party of the second part, as the trustee, under these presents, or for any successors of the said party of the second part in the trust created by these presents, to enter into and upon the railway and premises hereinbefore granted or conveyed, and each and every part of the same, and from thenceforth the said railway and premises and each and every part thereof, and all and singular the rights and franchises hereinbefore granted, to have, hold and enjoy, operating the said premises by such superintendents, managers, receivers, assistants and servants, or other attorneys or agents as the said trustee shall deem proper, and making from time to time all such repairs and replacements, and all such useful alterations, additions and improvements to said railway and premises as the said trustee may deem expedient and judicious. And it shall likewise be lawful for the said trustee, after any and every default happening and continuing aforesaid, to collect and receive all revenues and profits of the said railway and premises, and every part and parcel thereof, and after deducting therefrom all the expenses lawfully incurred in making such entry, or in otherwise obtaining possession of said premises, including reasonable attorney and counsel fees, as well as any and all expenses of holding, operating and managing the said railway and premises, and conducting the business thereof,

including the costs and expenses of all such repairs, replacements, alterations, additions and improvements, as may be made by said trustees as aforesaid, and all payments which may be made or be due for taxes and assessments, or other charges or liens prior to the liens of these presents upon the said railway and premises, or upon any part or parcel thereof; and just compensation for the trustee's own services, to apply any and all revenues and profits of the said railway and premises which may be received by said trustee as aforesaid, to the payment first, of all overdue interest on said bonds, with interest thereon, and secondly, to the payment of all interest accruing during such possession of said trustee, which payment of interest shall be made to the holders of the bonds and coupons, evidencing the right to the same, ratably and without discrimination or preference between them.

Article fourth. It is hereby mutually agreed that at any sale of the railway and property hereinbefore conveyed, which may be made for the purpose of enforcing the lien of these presents, the trustee under these presents, for the time being, may in its own discretion, and not otherwise bid for, and if the same be obtainable at the price hereinafter mentioned, purchase and acquire the property so offered for sale, in behalf of all the holders of the bonds aforesaid which shall then be outstanding in proportion to the amount of said bonds, and of the overdue coupons thereunto belonging, by them respectively held.

Provided, however, that nothing herein contained shall authorize the said trustee to bid for the entire property then held upon the trusts of this indenture on behalf of the holders of said bonds, a sum exceeding the whole amount of said bonds then outstanding, with the interest accrued thereon, and the expenses of such sale, or an amount reasonably proportionate thereto, for any part of said property.

And it is hereby further agreed that the bonds and overdue coupons aforesaid, or any of them, shall be received in payment on account of the purchase-money of any property which shall be offered for sale as aforesaid as equivalent to so much of the said purchase money as would be distributable and payable thereon out of the proceeds of such sale.

Article fifth. In case default shall be made in the payment of any semi-annual installment of interest to accrue on any of the said bonds when such interest shall become payable, and if such interest shall remain unpaid and in arrear for the space of six months, then, and in each and every such case of the happening and continuing of such default in the payment of interest, the principal of each and all of the said bonds may be declared by the trustee for the time being hereunder, or by a majority in interest of the holders of all the said bonds which may then be outstanding and unpaid, at the option of such trustee, or of such majority in interest of bondholders, to be and thereupon the same shall become and be due and payable immediately, notwithstanding that the time limited in said bonds for payment thereof may not then have elapsed.

Article sixth. It is hereby expressly declared and agreed that in

case default shall be made in the payment of interest upon any of the said bonds when such interest shall become due and be demanded, and such default shall continue for the space of six months, or in case default shall be made in the payment of the principal of any of the said bonds when the same shall become due, then, and in either and every such case of default, it shall be the duty of the trustee for the time being, under these presents, to take appropriate proceedings at law or in equity to enforce the rights of the holders of said bonds upon a requisition to that effect being made upon the said trustee, signed by the holders of at least one-third in amount of the said bonds then outstanding.

Article seventh. The trustee, under these presents, shall
16 have at all times, while the said bonds or any of them remain outstanding, and is hereby granted full power and authority, to be exercised in the discretion of said trustee and not otherwise, to release from the lien and operation of these presents, in such manner as it may be advised upon the request in writing of the said party of the first part, its successors or assigns, any portion of the aforesaid premises, not being a part of the main line of the said railway which, in the judgment of such trustee, shall not be necessary for use in connection therewith, and which shall have been acquired for station or depot purposes, or for shops or other buildings, or for supplying fuel, gravel, or other material, but which, in the judgment of such trustee, it shall have become unnecessary or inexpedient to retain in consequence of its having become necessary or desirable to change the location of such depot, shop or other building, or to substitute other lands for the purpose of supplying such fuel, gravel or material; provided, always, that any and all lands and premises which shall be acquired for station or depot purposes, or for shops or other buildings, or for the purpose of supplying fuel, gravel or other material, shall be conveyed to the said trustee to be held by it, upon the trusts of these presents in the same manner as the premises so released. And the said trustee may also allow the said company, its successors or assigns, to dispose of any rolling stock, equipment and machinery or other personal property, which may be held for use upon or in connection with said railway, or the business thereof, but which in said trustee's judgment shall have become unfit, or undesirable for such use; provided, always, that any and all rolling stock, equipment and machinery or other personal property which may be acquired in substitution for any similar property so disposed of, shall become and be subject to the lien of these presents.

Article eighth. It is hereby expressly declared, and these presents are upon the condition, that if the said party of the first part shall well and truly pay and discharge the interest on each and every of the said bonds as the same shall mature, and shall well and truly pay and discharge the principal of each and every of the said bonds when such principal shall become due and payable, according to the true intent and meaning of said bonds, and of these presents, and shall well and truly keep and perform the other covenants and agreements in these presents contained, to be by it kept

and performed, then these presents, and all the estate and interest thereby granted shall cease, determine and become void, otherwise the same shall be and remain in full force and virtue, and the said party of the first part hereby covenants, promises and agrees to and with the said party of the second part, and to and with its successors in trust, that the said party of the first part shall and will well and truly pay the said bonds, and all interest to accrue
17 thereon, at the times and in the manner in said bonds mentioned, and according to the true intent and meaning thereof.

Article ninth. It is hereby declared and agreed that the trustee under these presents shall be entitled to a reasonable compensation for any services which the said trustee may hereafter render in the trust hereby created to be paid by the said party of the first part; that the said trustee shall not be answerable for the default or misconduct of any agent or attorney who may be appointed by it in pursuance of these presents, if such agent or attorney be selected with reasonable care, and that the said trustee shall not be answerable or accountable for anything whatever in connection with said trust, but gross negligence or willful misconduct or default. And it is further declared and agreed that the trustee hereunder may at any time be removed by a majority in interest of the *bona fide* holders of said bonds, provided such removal be made by an instrument in writing under seal duly executed and acknowledged; that the said trustee may resign the trust under these presents at any time by giving sixty days' notice, in writing, of the intention so to do, to the said party of the first part, and to such of the holders of said bonds as shall have registered with such trustee their names and post-office addresses, provided such notice of resignation be served on the said party of the first part at its principal office, and on the bondholders who shall have so registered their names and addresses with said trustee, by the deposit thereof in the mail directed to the said bondholders respectively. And it is further agreed and declared that in case the trustee, hereby appointed, or any successor of such trustee, shall at any time hereafter resign the said trust, or be removed therefrom, as aforesaid, another trustee or trustees may and shall be appointed by a majority in interest of the holders of said bonds, by an instrument in writing duly signed by such majority in interest of said bondholders, given at a meeting of such bondholders, duly convened and held as hereinafter provided.

And it is further agreed and declared that in case the appointment of a trustee shall be unduly delayed, and the trust shall remain vacant for more than sixty days, any holder or holders of said bonds to the aggregate amount of one hundred thousand dollars or upwards, upon reasonable notice to the said party of the first part, may apply to any court of competent jurisdiction for the appointment of a new trustee, but no bondholder shall be entitled to make such application to court until a reasonable time, to wit: sixty days shall have been allowed for the purpose of enabling a majority in interest of said bondholders to appoint a new trustee as aforesaid.

And it is hereby further agreed that it shall be the duty of
18 any trustee resigning or being removed as aforesaid, to execute, acknowledge and deliver, not at his own cost or expense,

but at the cost and expense of the party of the first part, any and all deeds and instruments which such trustee may be reasonably requested by the said new trustee to execute for the purpose of assuring the title in said premises to such new trustee.

And it is further hereby expressly declared and agreed that whenever, and as often as any contingency shall arise in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or power, the trustee hereunder shall be, and is hereby authorized and empowered at the proper cost and expenses of the said party of the first part, to call a meeting of all the holders of bonds secured hereby, to be held in the city of New York, by advertisement to be published three times in each week for four weeks in one newspaper of good circulation amongst the business community in that city, and in default of such meeting being called by said trustee, within ten days after notification in writing by any bondholder of the necessity therefor, it shall be competent for any holder or holders of said bonds to the aggregate amount of one hundred thousand dollars, to call said meeting in the manner aforesaid.

Provided, however, that at any meeting called as aforesaid, a majority in interest of the holders of said bonds may prescribe and establish such rules as they may deem proper for the calling of future similar meetings, and the regulation of the proceedings thereof. And it is hereby declared and agreed that at any meeting convened and held pursuant to these presents, the holders of said bonds shall be competent to exercise in person or by proxy all the powers and authority conferred upon them by these presents.

Provided, nevertheless, that any person appearing at said meeting of bondholders, and claiming the right to participate therein, shall, if requested by any bondholder present thereat, produce the bond or bonds upon which such person may claim the right to vote at such meeting, or file an affidavit with the chairman of the meeting that he, the person so claiming the right to participate in such meeting is a holder of one or more of the bonds aforesaid, or the proxy of such holder, in which affidavit he shall specify the amount and number of the bonds which he claims to hold, or represent, before being allowed to vote at such meeting, except for the purpose of temporarily organizing the same, and on the adjournment of such meeting all such affidavits shall be delivered to the trustee under these presents.

And this indenture further witnesseth, that the said party of the first part, for the consideration aforesaid, has promised and
19 agreed, and does hereby covenant, promise and agree to and with the said party of the second part, and its successors, that the said party of the first part, its successors and assigns, shall and will well and truly pay or cause to be paid, unto the holder or holders of said bonds, the principal and interest thereof, as the same shall become payable according to the tenor of said bonds and the terms of the coupons thereto annexed; and shall and will do, observe and perform any and every act and thing mentioned in or

required by these presents, to be by it or them done, observed and performed, and that the said party of the first part, its successors and assigns, shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee under this indenture, execute, acknowledge and deliver all such further deeds, conveyances and assurances in the law for the better assuring unto the said party of the second part, and unto its successors, upon the trusts herein expressed, the railway, equipments, appurtenances, franchises, property and things hereinbefore mentioned, and particularly any and all franchises whatsoever, which shall or may at any time hereafter, while the said bonds or any of them, remaining unpaid, be acquired by the said party of the first part, its successors or assigns, as by the said trustee or by its co-nsel, learned in the law shall be reasonably advised, directed or required.

In witness whereof, the said party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and secretary on the day and year first above written, and the said party of the second part, in order to evidence its acceptance of the trust hereby created, has also caused its corporate seal to be hereunto affixed and these presents to be signed by its president and secretary.

THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY,
By WILLIAM S. HOOK, *President.*

(Attest:) EDWARD L. McDONALD, *Secretary.*

[CORPORATE SEAL.]

THE MERCANTILE TRUST COMPANY OF NEW YORK CITY, *Trustee,*
By WILLIAM S. HOOK, *President.*

(Attest:) EDWARD L. McDONALD, *Secretary.*

[CORPORATE SEAL.]

20 And afterwards, to wit: on the said twenty-first day of September, in the June term of said court, in the year of our Lord one thousand eight hundred and ninety-three, the following proceedings were had in said court in said cause, and entered of record to wit:

Order, Sept. 21, 1893.

THE MERCANTILE TRUST COMPANY OF New York, Complainant, *vs.* THE CHICAGO, PEORIA & ST. LOUIS RAILway Company, Defendant.	In Equity. Consolidated Cause.

Now comes The Mercantile Trust Company of New York by Alexander & Green, its solicitors, and C. B. Alexander, of counsel, and come also R. J. Cavett, John M. Coughlin *et al.*, Woodward &

Tiernan Printing Company, St. Louis & Eastern Railway Company, by Bluford Wilson, their solicitor; comes also The Atchison, Topeka & Santa Fe Railroad Company, by George R. Peck, its solicitor; comes also The Chicago, Peoria & St. Louis Railway Company, by I. L. Morrision, its solicitor, and said parties, except the said defendant, The Chicago, Peoria & St. Louis Railway Company, move for the appointment of a receiver of all and singular the premises and property in the said bill of complaint of the Mercantile Trust Company, and of said several intervening bills, petitions and cross-petitions consolidated therewith, upon consideration whereof, and it appearing to the court from the papers filed in said causes consolidated, that a receiver or receivers should be appointed for the property described in said several bills, petitions and cross-petitions, the said Chicago, Peoria & St. Louis Railway Company objecting thereto, it does therefore order, adjudge and decree that C. H. Bosworth, of the city of Springfield, Illinois, and E. Ellery Anderson, of New York city, be, and they hereby are appointed receivers of all and singular the said property above mentioned upon respectively executing a bond, with good and sufficient security to be approved by this court in the sum of $50,000 each,
21 conditioned for the faithful performance of their several duties as such receivers respectively, for obeying all the lawful orders of the court herein. Such bond may, in the case of E. Ellery Anderson, be executed before and the justification taken before a commissioner for the southern district of New York, and the surety may be approved by one of the judges of the circuit court of the United States for the southern district of New York, and upon approval of said bond and upon taking the official oath, shall be sufficient qualification as receiver, the one first qualifying taking possession for the two jointly, and such receiver shall forthwith be in possession of, operate and maintain said railroad and premises alone until the other receiver is qualified, being the railroad of the Chicago, Peoria & St. Louis Railway Company, comprising also the Jacksonville, Louisville & St. Louis Railroad Company, the Litchfield, Carrollton & Western Railroad Company and the Louisville & St. Louis Railway Company, and including a partially constructed line of railway northwestwardly from Havana, together with all the constituent railroad lines now operated by the said Chicago, Peoria and St. Louis railway line, commonly known as the "Jacksonville Southeastern line," more fully and particularly described as follows, to wit: Extending, lying and being a railroad from the city of Pekin, through the counties of Tazewell, Mason, Cass, to and through the city of Jacksonville, in the county of Morgan, and thence through the said county of Morgan and the counties of Macoupin and Montgomery to and through Litchfield, and thence through the counties of Montgomery, Macoupin, Madison and St. Clair, to East St. Louis, in said last-named county; and from Litchfield southeasterly through the counties of Montgomery, Bond and Clinton, to Centralia in the county of Marion, and thence through the county of Marion to Drivers, in the county of Jefferson; and from Havana, in said county of Mason, to Petersburg, in the

county of Menard, and thence through Springfield, in the county of Sangamon; also from Barnett westwardly through Carlinville, in said county of Macoupin, thence through Carrollton, in the county of Greene, to Columbiana, on the Illinois river, together with all interests in and contract rights and privileges for the use of the Peoria and Pekin Union railway, from the said city of Pekin to the city of Peoria, in the county of Peoria, and all the terminal contract rights and privileges at East St. Louis, all in the State of Illinois, together with all the equipments owned, leased or held in car trusts or otherwise, and the tolls, rents, incomes, franchises, issues and profits of the said Chicago, Peoria and St. Louis Railway Company and its said constituent companies, and all their appurtenances as well as their land and other premises as now held, used and operated by the said company, as fully described in their existing mort-

22 gages, deeds of trust, leases, contracts, and other evidences of title and possession, reference thereto for greater certainty to be had, with all property rights, powers, privileges and franchises and equities now owned, possessed, held or controlled by the said The Chicago, Peoria and St. Louis Railway Company, it being the purpose and intention of this order to clothe the said receiver with all the property rights, powers, privileges and franchises now owned, possessed, held or controlled by the said The Chicago, Peoria and St. Louis Railway Company, or any of the said constituent or affiliated lines now under a common management, as the Jacksonville Southeastern line.

It is further ordered, adjudged and decreed, that the said Chicago, Peoria and St. Louis Railway Company, its officers, agents, servants, employés, and any and all persons in any way having the custody of any property or funds belonging to the said railway company in any way, shall turn over to the said receivers or receiver, on demand, any and all property to which said receivers or receiver are entitled under this order, together with all books, moneys, assets, accounts, choses in action, and property of every nature and kind belonging to or in the possession of the said defendant company or any of its constituents; and all persons are hereby forbidden in any manner to interfere with the possession of said receivers or receiver, or to prosecute any suit or suits against the defendant railway company without the consent of the court first had and obtained.

And the said receivers are hereby clothed with all the authority and rights usually given to receivers by courts of equity, to take charge of, care for and operate a railroad; to make report of his acts and doings at least every month to the court, and at any other time when ordered by the court, to collect and receive the tolls, rents, moneys, issues and profits of said premises and property as covered by this order, and out of the same, they shall put, maintain and keep said property in good repair, and shall further pay:

First. All past-due taxes.

Second. All current operating expenses.

Third. All past-due wages as shown by the pay-rolls and on such proof as shall be satisfactory to the receivers or receiver.

Fourth. All claims for materials and supplies which have been

incurred in the operation and maintenance of said property during the six months last past, and all ticket trackage balances due from said railroad.

(To which last item No. 4 counsel for the Mercantile Trust Company, trustee, objects, and which objection the court upon argument overrules.)

23 In their reports so ordered to be made of receipts and expenditures and their doings under this order, the said receivers shall report whether there are any funds in their hands accruing from said income applicable to payment of interest or principal of any indebtedness of the said Chicago, Peoria & St. Louis Railway Company, or any of the constituent companies out of which by consolidation, lease or otherwise it has been formed, and power and authority are hereby reserved to any party interested in any of the constituent companies out of which said company was formed to apply to the court for a direction to the receivers to keep an account of the receipts and expenditures of such constituent company, so as to preserve and secure any special rights which the court may find to exist in favor of such constituent company. And all other matters not included in this order are reserved for the future consideration of the court. And the said C. H. Bosworth, comes and files his bond, which is approved by the court, and takes the oath of office, and accepts the office of receiver hereby conferred upon him.

24 Afterwards, to wit, on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and ninety-five, came Jacob Rau, by his solicitors, and filed in the clerk's office of said court *its* intervening petition, which is as follows, to wit:

Intervening Petition of Jacob Rau.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK, Complainant,
vs.
THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY, Defendant.
} Consolidated Cause.

Intervening petition of Jacob Rau.

To the honorable the judges of said court:

Comes now your petitioner, Jacob Rau, a citizen of the State of Minnesota, residing at Wykoff therein, intervening herein, and by leave of court first had and obtained, files this his petition, and complaining of the Chicago, Peoria & St. Louis Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and having its principal office and place of business at Springfield therein, states:

That on the 10th day of October, 1894, and on the 16th day of the same month, your petitioner at Wykoff, in the State of Minnesota, delivered to the Chicago, Milwaukee & St. Paul Railway Company a car-load of barley on each one of said days in cars of that company, to wit: October 10, 1894, car No. 46064, and on October 16, 1894, car No. 43222; that each one of said cars of barley was consigned to the Orthwein Grain Company, St. Louis, Missouri, by way of East St. Louis; that each one of said cars of barley was transported by said Chicago, Milwaukee & St. Paul Railway Company to its station at Rock Island, the terminus of its line of railroad,

and at that place each one of said cars was delivered to the
25 Rock Island & Peoria Railroad Company, and by said last-named company transported to Peoria, in said State of Illinois, and there delivered to the Chicago, Peoria & St. Louis Railway Company, to be transported by it to destination; that said last-named company received said two car-loads of barley, and transported same as far as East St. Louis, a station on its line of road, and while the same were still in transit, and on their way to destination, and in the possession and under the control of said last-named company, the said two cars containing said barley, were destroyed by fire on the evening of the 28th day of October, 1894; that said two car-loads of barley were of the value of eleven hundred, forty-four dollars and seven cents ($1,144.07), and on account of the loss and destruction of said barley by fire, as aforesaid, your petitioner has suffered damage to that amount.

Your petitioner further states that said barley belonged to him at the time it was so destroyed by fire, and that he was the sole owner thereof.

Your petitioner further shows, that on the 21st day of September, 1893, in the suit of The Mercantile Trust Company of New York, complainant, against The Chicago, Peoria & St. Louis Railway Company, in the circuit court of the United States, southern district of Illinois, Mr. C. H. Bosworth was, by an order duly entered therein, appointed the receiver thereof, and placed in charge of the property, rights and franchises of said defendant railway company, and as such receiver has ever since the date of his appointment been engaged in managing and operating the railroad of said defendant railway company, in the transportation of persons and property over and upon the same, and that the liability of said railway company to your petitioner was incurred while its railroad was being operated by said receiver, and that the claim and demand of your petitioner herein is of a kind, and accrued within a time which entitles it to a priority over debts and demands secured by mortgages, and to a payment by said receiver out of any funds which may come into his hands while operating the railroad of said defendant railway company.

Wherefore, your petitioner prays that said sum of eleven hundred forty-four dollars and seven cents ($1,144.07), may be allowed against said receiver appointed as aforesaid; that said claim be declared a lien paramount to all other claims against the property of said Chicago, Peoria & St. Louis Railway Company, prior in right to

the claims of mortgages, and a lien upon any money in the hands of said receiver, not otherwise appropriated; that the said receiver be ordered to pay the said amount out of any moneys that may come into his hands, or out of the proceeds of the sale of the property before any distribution shall be made of the same, and
26 for such other and further orders and decrees as to the court shall seem meet and proper.

JACOB RAU.

BURTON HANSON,
GEORGE P. CARY,
Attorneys for Petitioners.

UNITED STATES OF AMERICA, }
Northern District of Iowa, } ss:

Jacob Rau, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition, and knows the contents thereof, and that the matters alleged and set forth therein are true.

JACOB RAU.

Subscribed and sworn to before me this 10th day of January, A. D. 1895.

FRED WENDORF,
[SEAL.] *Notary Public.*

(Indorsed:) Filed January 26, 1895. James T. Jones, clerk.

27 Then afterwards, to wit: on the 11th day of March, in the year last aforesaid, came the receiver, by his solicitor, and filed in the clerk's office of said court his answer to said intervening petition of Jacob Rau, which answer is as follows, to wit:

Answer. Filed March 11, 1895.

In the Circuit Court of the United States for Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK *vs.* THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } Consolidated. In Equity.

Answer of the receiver herein to the intervening petitions of C., M. & St. P. R'y Co., W. W. Cargill Company, T. McMichael & Son, S. Y. Hyde Elevator Company, Huntting Elevator Company, Jacob Rau, Gilchrist & Company, Henry Rippe, and Carr, Ryder & Engler Company.

The receiver now and at all times hereafter saving to itself all benefit and advantage of exceptions, or otherwise, to the many errors, uncertainties, and other imperfections in the said intervening petitions contained, for answer thereto says:

That after the delivery of the said cars and their contents to this receiver, and before the filing of the said intervening petitions, the said cars and their contents were delivered by this receiver, in the due course of business, to the Terminal Railroad Association of St. Louis. And that while in the possession and under the care of the said Terminal Association the said cars and contents were damaged or destroyed.

And this receiver, further answering, says that the said cars and contents, in addition to being in the custody and care of said Terminal Association, were damaged and destroyed by fire negligently caused by and originating in a spark coming from a certain engine belonging to and being operated by and in the service of the said Terminal Association of St. Louis.

This receiver, further answering, says that the property mentioned in said petitions was destroyed or damaged by fire at East St. Louis during the night of October 28, 1894, and was at the time of said fire in the care and custody of the said Terminal Rail-
28 road Association of St. Louis, under a contract by which said association was to give to your receiver terminal facilities at East St. Louis, and that according to which it undertook to handle your receiver's trains, care for his engines and cars, and handle and care for his freight, including the property mentioned in the said intervening petitions, a copy of which contract is attached hereto and prayed to be taken as a part hereof; that the property mentioned in said intervening petitions was in the care of said Terminal Association, in the course of a regular interchange of business with that association, in accordance with the said contract and in accordance with the custom that had been in force for the past four years, in which it became and was the duty of the said Terminal Association to exercise due care and caution in the safe keeping and handling said cars and freight while in the custody and control of the same; but, unmindful thereof, and of its duty in the premises, the said Terminal Association willfully and negligently stored the said property in close proximity to a certain load of baled hay, which hay was fired by sparks from a certain passing switch-engine belonging to and then in the service and use of the said Terminal Association, which fire was communicated to the building and so to the property mentioned in said intervening petitions.

And this receiver, further answering, says by reason of the negligence of said Terminal Association in so storing such highly combustible and inflammable goods as baled hay in a building so constructed as to be a veritable fire-trap, in close proximity to railroad tracks, on which there were continually passing and repassing engines emitting sparks of fire, the conflagration of October 28, 1894, was caused. In said conflagration more than forty cars and their valuable contents were either wholly destroyed or damaged, notwithstanding the fact that the said Terminal Association had cars stored side by side with those destroyed or damaged, they were enabled and did save all of their said cars and sustained practically no loss on account of them.

Therefore your receiver denies that the petitioners are entitled

to the relief, or any part thereof, demanded as against this receiver, and to avoid a multiplicity of suits, asks this honorable court to make the said Terminal Railroad Association of St. Louis a party defendant hereto, and that a summons may be issued against said Terminal Railroad Association of St. Louis, commanding it to plead, answer, or demur, within a short time to be fixed by this court, to the allegations contained in the said intervening petitions, and this answer thereto, and to abide and be bound by any order that this court may make herein.

C. H. BOSWORTH, *Receiver.*
By BLUFORD WILSON, *Solicitor.*

29 *Memorandum of Agreement.*

Memorandum of an agreement, made this 1st day of June, A. D. 1891, by and between the Terminal Railroad Association of St. Louis, party of the first part, and the Chicago, Peoria and St. Louis Railway Company, party of the second part—

Witnesseth: That, whereas, the party of the first part desires to give the party of the second part terminal facilities at East St. Louis, Illinois, and St. Louis, Missouri, for the handling of its trains, care of its engines and cars, and the handling and care of its freight, on the terms and conditions following:

First. It is agreed that the party of the first part shall furnish the necessary yard room, or track facilities in the yards of the party of the first part in East St. Louis, Illinois, as now located, and the necessary switch-engines and yardmen to do the switching of the party of the second part in making up and breaking up all freight trains that depart from and arrive at East St. Louis; and the charge for the facilities and the work above named shall be at the rate of fifty cents (50) per loaded car in and out; empty cars in and out free.

Second. Cars made "bad order" by and during the making up and breaking up of trains in the yards set aside for the use of the party of the second part, to be repaired by the party of the second part, and the party of the second part shall furnish its own car inspectors.

All car- made "bad order" outside of the yards set aside for the use of the party of the second part shall be repaired by the party causing the damage.

Third. For all loads to and from the National stock yards the party of the second part is to pay the party of the first part one (1) dollar per car in and out, inclusive of the yard charge.

Fourth. All loaded cars to and from connections requiring transfer to be transferred at the current rate.

Fifth. All cars consigned to the East St. Louis freight-house of the party of the second part to be switched to the Wiggins transfer tracks without extra charge; regular switching charges on all other cars to and from connections.

Sixth. The party of the first part to furnish track room upon which the engines of the party of the second part can be switched

and cared for, and turned as may be required; the care of such engines to be under the supervision of the party of the first part; the price for the service rendered to be agreed upon by the master mechanic of the party of the first part and the superintendent of the motive power and machinery of the party of the second part.

Seventh. For the handling of merchandise at St. Louis, Missouri, the party of the first part is to set aside as much of the
30 freight-house known as "No. 2," in St. Louis, Missouri, as may be necessary for the business of the party of the second part; for the services rendered in handling merchandise in and out through the house, including the rent of house, checking billing, loading and unloading freight, there is to be a charge at the rate of fifteen (15) cents per net ton.

Eighth. The party of the second part to pay to the party or the first part for collecting and remitting cash fifty (50) dollars per month; for the making up of reports required and for any extra clerical work, twenty-five (25) dollars per month. The amount charged for collecting and remitting cash, and for making up reports, to be revised, by agreement between the parties to this contract, if it should be ascertained hereafter that the expense is greater than the amount named.

This contract to be in force from and after the 1st day of June, A. D. 1891, and to continue for six months from that date, and to be renewed, from time to time, as desired, at the expiration thereof, if satisfactory to both parties.

In witness whereof, the parties hereto have caused the same to be executed in duplicate this 1st day of June, A. D. 1891.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
By WILLIAM TAUSSING, *President.*

Attest:
[SEAL.] J. A. HANNA, *Secretary.*

CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY,
By WILLIAM S. HOOK, *President.*

Attest:
[SEAL.] MARCUS HOOK, *Secretary.*

(Indorsed:) Filed March 11, 1895. James T. Jones, clerk.

31 Afterwards, to wit: on the 13th day of May, in the year of our Lord one thousand eight hundred and ninety-five, came again the receiver by his solicitors, and filed in the clerk's office of said court his cross-petition, which cross-petition is as follows, to wit:

Cross-petition. Filed May 13, 1895.

In the Circuit Court of the United States for Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF New York
vs.
THE CHICAGO, PEORIA & ST. LOUIS RAILway Company *et al.*
} Consolidated. In Equity.

Cross-petition of the receiver herein to the intervening petitions of Chicago, Milwaukee & St. Paul Railway Company, the W. W. Cargill Company, T. McMichael & Son, the S. Y. Hyde Elevator Company, the Huntting Elevator Company, Jacob Rau, Gilchrist & Company, and Henry Rippe and Carr, Ryder & Engler Company.

Your receiver further respectfully shows that the said cars and contents, in addition to being in the custody and care of said Terminal Association, were damaged and destroyed by a fire negligently cause by and originating in a spark coming from a certain engine belonging to and being operated by and in the service of the said Terminal Railroad Association of St. Louis.

Your receiver further respectfully shows unto this honorable court that all of the property mentioned in said petitions was destroyed or damaged by fire at East St. Louis during the night of October 28, 1894; that said property was at the time of said fire in the care and custody of said Terminal Railroad Association, under a contract by which said association was to give to your receiver terminal facilities at East — Louis; that according to the terms of said contract said Terminal Association undertook to handle your receiver's trains, care for his engines and cars, and handle and care for his freight, including the property mentioned in said intervening petitions; a copy of which contract is attached hereto and prayed to be made a part hereof; that under the terms of said contract and in accordance with the custom that has been in force for the last four years, it became and was the duty of said

32 Terminal Association to exercise due care and caution in the safe keeping and handling of said cars and contents mentioned in said intervening petitions, while in the custody and control of the same; but unmindful thereof and of its duty in the premises, the said Terminal Association wilfully and negligently stored the said property in close proximity to a certain load of baled hay, which hay was fired by sparks from a certain passing switch-engine belonging to and then in the service of the said Terminal Association, which fire was communicated to the building, and so to the property mentioned in said intervening petitions.

Your receiver respectfully represents unto this honorable court that on February 21, 1895, the said petitioner, Carr, Ryder & Engler Company, on January 29, 1895, the said petitioner, Chicago, Milwaukee & St. Paul Railway Company, and on January 26, 1895, each and all of the other aforesaid petitioners, exhibited their intervening petitions in this honorable court, filed in the above-entitled cause, averring respectively that they had delivered certain freight to your receiver through various other lines of railroad for certain specified destinations; that such freight had been received by your receiver and transported as far as East St. Louis; that while in the possession and control of your receiver said freight was damaged or wholly destroyed by fire on the evening of October 28, 1894; that the value of such freight was a certain fixed sum of money, respectively set out in each of the said petitions, and finally praying that this receiver be decreed to pay to each of the said petitioners the amount claimed in their said petitions for the destruction of said freight and cars, and that the same may be declared a prior and paramount lien on the property of the Chicago, Peoria & St. Louis Railway Company, now being operated by this honorable court through this receiver.

Your receiver further respectfully shows unto this honorable court that after the delivery of the said cars and their contents to this receiver, and before the filing of the said intervening petitions, the said cars and their contents were delivered by this receiver to the Terminal Railroad Association of St. Louis, in the due course of business; and that while in the possession and under the care of said Terminal Association, the said cars and contents were damaged or destroyed.

Your receiver further respectfully represents that by reason of the negligence of said Terminal Association, in so storing such highly combustible and inflammable goods as baled hay in a building so constructed as to be a veritable fire-trap in such close proximity to railroad tracks on which there were continually passing and repassing engines emitting sparks of fire, the conflagration of October 28, 1894, was caused, and the cars and contents mentioned in said intervening petitions were damaged or destroyed;

33 that in said conflagration, notwithstanding the fact that said Terminal Association had many cars stored side by side with those mentioned in said intervening petitions, and that the said association were enabled, and did save all of their said cars, and sustained practically no loss on account thereof, all of the said cars and contents which had been delivered by your receiver to the said association were either wholly destroyed or damaged.

Wherefore your receiver prays that a rule may be entered by this honorable court directed against the said Terminal Railroad Association of St. Louis, requiring it within a short day to be fixed by this court to show cause why it should not be made a party defendant to each of the said intervening petitions and be bound and abide by any order or decree which may be made thereon; and that Mr. James T. Jones, clerk herein, be directed to serve a copy of such

rule on the said Terminal Railroad Association of St. Louis; and your receiver will ever pray, etc.

C. H. BOSWORTH, *Receiver*,
By BLUFORD WILSON, *Solicitor*.

(Indorsed:) Filed May 13, 1895. James T. Jones, clerk.

Afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-five, the following further proceedings were had in the matter of said intervening petition and entered of record, to wit:

Motion, June 1, 1895.

In the Circuit Court of the United States for Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK
vs.
THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.*
} Consolidated. In Equity.

In the matter of the intervening petitions of the Chicago, Milwaukee & St. Paul Railway Company, the W. W. Cargill Company, T. McMichael & Son, the S. Y. Hyde Elevator Company, the Huntting Elevator Company, Jacob Rau, Gilchrist & Company, Henry Rippe, and the Carr, Ryder & Engler Company.

This cause coming on to be further heard upon the application of C. H. Bosworth, the receiver herein, for a rule on the
34 Terminal Railroad Association of St. Louis to show cause why it should not be made a party defendant to each and every one of the said intervening petitions; and the court being fully advised in the premises, upon consideration thereof, does hereby order that a rule be entered herein directed against the said Terminal Railroad Association of St. Louis requiring it to show cause on or before the 15th day of June, 1895, why it should not be made a party defendant to each and every one of the said intervening petitions filed herein; to plead, answer or demur to the same; and be bound by and abide all orders and decrees which shall be entered herein; and the clerk of this court is hereby ordered to serve the said Terminal Railroad Association with a copy of this order at once.

Afterwards, to wit, on the 15th day of June, in the year last aforesaid, came the Terminal Railroad Association of St. Louis, by its solicitors, and entered its motion in said cause, which motion is as follows, to wit:

Motion, June 15, 1895.

In the Circuit Court of the United States, Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK
vs.
THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY *et al.* } In Equity.

In the matter of the intervening petitions of the Chicago, Milwaukee and St. Paul Railway Company, the W. W. Cargill Company, T. McMichael & Son, the S. Y. Hyde Elevator Company, the Huntting Elevator Company, Jacob Rau, Gilchrist & Company, Henry Rippe, and the Carr, Ryder & Engler Company.

The Terminal Railroad Association of St. Louis, against whom a rule was heretofore entered herein, to show cause why it should not be made a party defendant to each and every one of the aforesaid intervening petitions, expressly limiting its appearance only for the purpose of this motion, moves the court to discharge the said rule for the following, among other reasons:

1. This court has no jurisdiction over the person of the Terminal Railroad Association of St. Louis.

2. The said intervening petitions are filed against C. H.
35 Bosworth in his capacity of receiver of the Chicago, Peoria and St. Louis railway, and is not a party to the main suit.

3. The Terminal Railroad Association of St. Louis is not a party to the main suit.

4. The intervening petitions aforesaid, as appears from the same, seek to recover from C. H. Bosworth, as receiver of the Chicago, Peoria and St. Louis railway, damages sustained by reason of acts and transactions of said receiver in carrying on the business connected with the property committed to his possession, as such receiver, and in which controversy the Terminal Railroad Association of St. Louis is interested.

5. The Terminal Railroad Association of St. Louis cannot lawfully be called into court as a defendant by the entry and service of a rule.

6. There is no allegation, direct or indirect, in any of the said intervening petitions, justifying any action against the Terminal Railroad Association of St. Louis.

7. The complainants in said interventions have not elected to proceed against the Terminal Railroad Association of St. Louis, and there is no right or authority existing in the defendant C. H. Bos-

worth to call this association into court, as a defendant to said petitions.

8. Said interventions present one issue, viz: Is Bosworth, receiver, liable to the intervenors, and if a new defendant is brought in, no judgment, order or decree can be entered against such new defendant on the pleadings.

9. The method adopted by the receiver to bring in a new defendant is contrary to the established and well-understood practice in chancery, is illogical, irregular and not sanctioned by law.

Wherefore and for other good reasons, the said rule ought to be discharged.

SAMUEL P. WHEELER,
Solicitor for Terminal R. R. Ass'n.

(Indorsed:) Filed June 15, 1895. James T. Jones, clerk.

36 Afterwards, to wit: on the 27th day of August, in the year last aforesaid, came again the parties in the above-entitled cause, by their solicitors, and filed in said cause the following stipulation, to wit:

Stipulation, Aug. 27, 1895.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petition of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, and Thomas McMichael & William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

For the purpose of saving the labor and expense of making proof thereof it is stipulated by the parties to these proceedings, as follows, to wit:

1. That the petitioner, Carr, Ryder & Engler Company, is a corporation, as alleged, having its place of business at the city of Dubuque, Iowa, and that on the 20th day of October, 1894, it delivered to the Chicago, Milwaukee & St. Paul Railway Company, at said Dubuque, the property mentioned in its petition filed herein, which property was consigned to May & Thomas Hardware Company, Birmingham, Alabama, by way of East St. Louis, Illinois, and was loaded in a car of the Rock Island and Peoria Railway Company, No. 1004, and was to be transported to destination, pursuant to the bill of lading issued therefor, which bill of lading is attached to this stipulation, marked Exhibit "A," and is made part hereof; that while said property was in transit it was destroyed by fire at East St. Louis on the evening of the 28th of October, 1894; that at the time it was so destroyed the said petitioner was the owner thereof; that said property so destroyed was of the value of seven hundred seventy-seven dollars and $\frac{28}{100}$ ($777.28), and that said petitioner was damaged in said sum of $777.28 on account of
37 said property having been so destroyed, and that the petitioner is entitled to recover that amount, with interest, if it shall be adjudged that it is entitled to recover in this proceeding.

2. That the Chicago, Milwaukee and St. Paul Railway Company is a corporation, as alleged, having its principal office at the city of Milwaukee, Wisconsin; that on the 28th day of October, 1894, it was the owner of thirty-eight (38) cars mentioned and described in its petition on file herein; that during the evening of said 28th day of October the said cars while on the tracks of the Terminal Railroad Association of St. Louis, in its yard at East St. Louis, commonly

used by the receiver herein under the agreement between said association and the Chicago, Peoria & St. Louis Railway Company, dated August 1, 1892, were damaged by fire at East St. Louis, in the State of Illinois; that each one of said cars was consigned as per bills of lading and waybills introduced in evidence; that the amount of damage to each of said cars, except car No. 12, is as stated in the petition of said company, under the heading "Net loss & salvage," and that the total amount of damage to said cars is $9,033.73, which amount the Chicago, Milwaukee & St. Paul Railway Company is entitled to recover, if it shall be adjudged that it is entitled to recover in this proceeding.

3. That said petitioner, the W. W. Cargill Company, is a corporation, as alleged, and that at the dates and times, and at the place in its petition mentioned, it delivered to the Chicago, Milwaukee & St. Paul Railway Company four (4) car-loads of barley in cars, as stated in its petition, consigned to the Teichman Commission Company, St. Louis, Missouri, via East St. Louis, Illinois. That receipts, of which Exhibits "B," "C," "D" and "E" attached to this stipulation are copies, were given by said railway company at the times said barley was received by it for transportation. That said barley was destroyed by fire at said East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioner, and was of the value of twelve hundred and fifty-three dollars and $\frac{53}{100}$ ($1,253.53). That the petitioner was damaged in that sum, and is entitled to recover that amount, and interest, if it shall be adjudged that it is entitled to recover in this proceeding.

4. That the petitioner, The S. Y. Hyde Elevator Company, is a corporation, as alleged, and that at the dates and times and at the places in its petition mentioned, it delivered to the Chicago, Milwaukee and St. Paul Railway Company six (6) car-loads of barley, in cars as stated in its petition, consigned to the Teichman Commission Company, St. Louis, Missouri, via East St. Louis, Illinois; that receipts the same in form as Exhibits "B," "C," "D" and
38 "E" attached to this stipulation were given by said railway company at the time said barley was received by it for transportation; that said barley was destroyed by fire at East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioner, and was of the value of two thousand one hundred and fifty-four dollars and $\frac{53}{100}$ ($2,154.53); that the petitioner was damaged in that sum and is entitled to recover that amount, and interest, if it shall be adjudged that it is entitled to recover in this proceeding.

5. That the petitioner, Jacob Rau, of Wykoff, Minnesota, at the dates and times and at the place in his petition mentioned, delivered to the Chicago, Milwaukee and St. Paul Railway Company two (2) car-loads of barley in cars as stated in his petition, consigned to the Orthwein Grain Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts, the same in form as Exhibits "B," "C," "D" and "E" attached to this stipulation, were given him by said railway company at the time said barley was received for transportation; that said barley was destroyed by fire at East St. Louis,

during the night of October 28, 1894; that said barley, at the time it was so destroyed, belonged to the petitioner, and was of the value of eleven hundred forty-four dollars and $\frac{7}{100}$ ($1,144.07); that the petitioner was damaged in that sum, and is entitled to recover that amount, and interest, if it shall be adjudged that it is entitled to recover in this proceeding.

6. That the petitioners, James N. Gilchrist and Colin F. Bell, are partners under the firm name of Gilchrist & Company, engaged in business at McGregor, Iowa, and that at the dates and times, and at the place in their petition mentioned, they delivered to the Chicago, Milwaukee and St. Paul Railway Company two (2) car-loads of barley in cars as stated in their petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts the same in form as Exhibits "B," "C," "D" and "E" attached to this stipulation, were given to them by said railway company at the time said barley was received for transportation; that said barley was destroyed by fire at East St. Louis during the night of October 28, 1894. That the said barley at the time it was so destroyed belonged to the petitioners, and was of the value of eight hundred and five dollars ($805.00); that the petitioners were damaged in that sum, and are entitled to recover that amount and interest, if it shall be adjudged that they are entitled to recover in this proceeding.

7. That the petitioner, The Huntting Elevator Company, is a corporation, as alleged, and that at the dates and times and at the places in its petition mentioned, it delivered to the Chicago, Milwaukee & St. Paul Railway Company ten (10) car-loads of barley in cars, as stated in its petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis,
39 Illinois; that receipts, the same in form as Exhibits "B," "C," "D" and "E," attached to this stipulation, were given to it by said railway company at the time said barley was received for transportation; that said barley was damaged and destroyed by fire at East St. Louis during the night of October 28, 1894; that said barley, at the time it was so damaged and destroyed, belonged to the petitioner, and the loss and damage thereof amounted to the sum of twenty-six hundred dollars and $\frac{56}{100}$ ($2,600.56); that the petitioner was damaged in that sum, and is entitled to recover that amount, if it shall be adjudged that it is entitled to recover in this proceeding.

8. That the petitioners, Thomas McMichael and William McMichael, are partners engaged in business at McGregor, Iowa, under the firm name of T. McMichael & Son, as alleged, and that at the dates and times, and at the place in their petition mentioned, they delivered to the Chicago, Milwaukee and St. Paul Railway Company eight (8) car-loads of barley in cars as stated in their petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis, Illinois. That receipts the same in form as Exhibits "B," "C," "D" and "E," attached to this stipulation, were given to them by said railway company, at the time said barley was received for transportation; that said barley was de-

stroyed by fire at East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioners, and was of the value of twenty-nine hundred and forty-two dollars and $\frac{56}{100}$ ($2,942.56); that the petitioners were damaged in that sum, and are entitled to recover that amount, with interest, if it shall be adjudged that they are entitled to recover in this proceeding.

9. That the petitioner, Henry Rippe, of Fairmount, Minnesota, at the dates and times, and at the place in his petition mentioned, delivered to the Chicago, Milwaukee & St. Paul Railway Company two (2) cars of barley in cars, as stated in his petition, consigned to the Orthwein Grain Company, St. Louis, Missouri, by way of East St. Louis. That receipts, in form as Exhibits "B," "C," "D" and "E," attached to this stipulation, were given him by said railway company; that said barley was destroyed by fire at East St. Louis during the night of October 28th, 1894; that said barley at the time it was so destroyed belonged to said Rippe, and was of the value of $1,165.67, and that he is entitled to recover that amount and interest, if it shall be adjudged that he is entitled to recover in this proceeding.

Dated August 27th, 1895.

BURTON HANSON &
GEORGE P. CARY,
Attorneys for Petitioners.
BLUFORD WILSON,
Solicitor for Receiver.

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Receipts of C., M. & St. P. Ry. Co.

41

EXHIBIT "B."

No. ..... *Station*... LA CROSSE. Oct. 20, 1894.

RECEIVED from W. W. CARGILL CO.

in apparent good condition

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY.	WEIGHT
Teichman Com. Co. St. Louis, Mo. Car 15254 Exhibit B.	Via E. St. Louis. Bulk Barley.	

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to ..... ready to be delivered at said warehouse, to the consignee or their warehouse at .....

owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company or carrier, it being expressly agreed that said property is to be transported upon and to all respects subject to the regulations of the published tariff of said company and to the conditions printed and endorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property, and it being further expressly agreed that this Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property, after its arrival at its warehouse aforesaid, or for any loss or damage thereto or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

(OVER)

J. C. HEITBAHN, Agent.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Bonds, Contracts, evidences of property, or other assets of the Corporation, is authorized to take charge of Bank Book, Money or other valuable papers or things, for or on account of any company, or to receive any peculiarities or rewards, for handling or transporting any such articles.

2. No Gold or Silver Coin or unmanufactured articles of gold and silver, or Jewelry, Watches, Plated Articles, Stationary, Musical Instruments, Glass, Silks, Laces, will be carried by the Corporation, for the use of which it will be required the character and kind of articles shall be specified in the bills of lading, and unless the proper extra price for the carriage and responsibility for such articles be paid.

Carriages and Sleighs, Show Cases, Machinery, Stoves and Castings, Marble, Looking Glasses, Mirrors, Pictures, Furniture, Glass, Glass and Crockery, Cabinet Ware and Furniture will only be taken at the owner's risk of breakage or injury during the course of transportation, and the loading and unloading thereof. Any description will be taken only on special terms and

1754

POOR COPY

36

Receipts of C., M. & St. P. Ry. Co 41

42

EXHIBIT C.

No.....

Station... LA CROSSE, Oct. 18, 1894.

RECEIVED from W. W. CARGILL CO.

in apparent good condition.....

MARKS AND CONSIGNEE	DESCRIPTION OF PROPERTY	WEIGHT
Teichman Com. Co. St. Louis, Mo. Via E. St. Louis. Exhibit "C."	Barley Cars 2452–20186. 30500–12856–9630. 47654–9168–1100.	

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to their warehouse at.....ready to be delivered at said warehouse, to the consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company or carrier, it being expressly agreed that said property is to be transported upon and in all respects subject to the regulations of the published tariff of said company and to the conditions printed and endorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property; and it being further expressly agreed that this Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property, after its arrival at its warehouse aforesaid, or for any loss or damage thereto or any delay in transportation or delivery thereof by any connecting company or carrier

(OVER.)

J. C. HEITBAHS, Agent.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Bonds Coupons, evidences of property or other writings, or be responsible for their loss or injury.

2. No Conductor, or other agent of the Corporation, is authorized to take charge of Bank Notes, Money or other valuable property for the Company, or to receive or carry the same, unless by the express consent of the Company, or for such articles.

3. No Gold or Silver Coin or Bullion, or manufactured articles of gold and silver, or Jewelry Watches, Pictures, Plated Articles, Statuary, Musical Instruments, Glass, Silks, Laces, will be carried unless the value thereof is stated in writing at the time of delivery for transportation, and the Corporation may require a memorandum in writing, stating the character and kind of articles and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid.

4. Articles will not be received for transportation unless properly packed in suitable Cases Boxes, Bales or Packages, and each must be well and clearly Marked with the name of the Consignee, the place to which and the route by which they are to be carried, and the name of the Consignor, the whole case or damage for loss or mismarkings will be paid. The Company will in no case be responsible for loss, injury or damage which might have been avoided by skillful and proper care on the part of the agents. All property is subject to inspection when necessary.

Goods in bundles will not be considered as properly packed, and the Company will not be responsible for any loss of parts or of the pilings of such packages.

No allowance for deficiency of Lemons, Oranges or other fruit, if not covered with canvas will be made.

5. The Corporation will not be responsible for damages occasioned by delays from storms, accidental or unavoidable causes; or by decay or injury to fruit, fish, dressed hogs, dressed poultry or other perishable property, or from injury to property packed in ice, or for delay in the delivery of such property, or for the non-delivery of such property in any certain time, nor in the time for any particular market.

The charges on lettered marble must always be prepaid.

The charges on perishable property must always be prepaid.

7. The Corporation will not undertake or agree to carry property by any particular train, nor in time for any particular market, nor will they, if they will forward the same with as reasonable dispatch as the general business of the Corporation will permit.

8. The Corporation will only be liable as warehousemen, after the property has been placed in their Public Depot, and will not be liable as to property by fire, while in their freight depot or upon their platforms.

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by animals in consequence of their viciousness, or for loss or injury happening to or occasioned by overloading the same, nor for any damages however caused, to live stock or animals of any description, transported or carried upon their railway, or in their cars or vehicles.

11. The Corporation will not be responsible for loss or damage to any article by fire or otherwise, the title of which resident is extremely liable of the Company's line of road, or in any point or place beyond, or to which it may be forwarded with as reasonable dispatch as the general business of the Corporation at its warehouse within mentioned, will admit, by whatever or freight train or vessel the same may be carried, whether such loss or damage happen by the act, default or negligence of the Corporation, its servants or agents, or otherwise howsoever, and whether the same occasionally, for transportation, the Company acting for the purpose of delivery to such carrier or freight-man, as the agents of the consignee or consignor, and not as carriers. The Company will not be responsible for any loss or damage to any article by fire or otherwise, after the same shall have arrived at the within mentioned Company's station for delivery to the consignee or to the connecting carriers or freight-men for transportation.

12. No outside agent or clerk has authority to alter or vary any of these Rules and Conditions. All claims for damages must be made in writing to the Company at the station of delivery within ten days after the property has been delivered, and before the property has become mixed with other property, and before any change has been made in the car containing the same, and before the car containing the same has been loaded with freight for any other station, and before the property has been removed from the depot or warehouse where delivered, and before the expiration of 72 hours after the property has been delivered, and after the expiration of 72 hours this Company shall be at liberty to sell the property to pay charges, and all claims for damages must be presented in writing to the Company at the station of delivery

1755

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Receipts of C., M. & St. P. Ry. Co.

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EXHIBIT D.

Station... LA X, WIS., Oct. 10 12, 1894.

No......

RECEIVED from W. W. CARGILL CO.

in apparent good condition.....

MARKS AND CONSIGNEE	DESCRIPTION OF PROPERTY	WEIGHT
Teichman Com. Co. St. Louis, Mo.	Cars { 20022—St. P. Bly. { 32986 " "	41100 40400

Duplicate.

Exhibit "D."

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to their warehouse at..... ready to be delivered at said warehouse, to the consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company or carrier, it being expressly agreed that said property is to be transported upon said in all respects subject to the regulations of the published tariff of said company and to the conditions printed and endorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property, and it being further expressly agreed that this Company assumes no liability and is not to be held responsible as common carriers, for any loss of, or injury to said property, after its arrival at its warehouse aforesaid, or for any loss of or damage thereto or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

(OVER.)

J. C. HEITBAHN, Agent

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry as ... Bank Bills, Bonds, Deeds, Contracts or Papers of any description whatever without special written agreement for their loss or delivery.

2. No Conductor, or other agent of the Corporation, is authorized to, [illegible] charges of Bank Notes, Money or other valuable packages, unless the value thereof is plainly expressed on the face of the receipt, and the same paid or agreed for by the Consignor, on or for such article.

3. No Gold or Silver Coin or Bullion, or manufactured articles of gold and silver, or Jewelry Watches, Pictures, Picture Articles, Statuary, Musical Instruments, unless with such articles carried by the Corporation delivered a memorandum in writing stating the character and value of such articles and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid.

Carriages, Pianos, Sewing Machines, Show Cases, Machinery, Stoves and Castings, Marble, Looking Glasses, Mirrors, Glass, Paintings, Pictures, all Liquids, and all articles liable to breakage, leakage, chafing, Furniture will only be taken at the owner's risk of breakage, unless specially agreed to in writing.

Explosive, inflammable and combustible articles of any description will be taken only on special terms and rates. If found secreted among other goods they will be liable to forfeiture, and the owner or consignee will be held responsible for all damage in consequence of the same being so secreted. [illegible]

4. Articles will not be received for transportation unless properly packed in suitable Cases, Boxes Baskets or Packages, and each must be well and securely fastened, otherwise they will not be received. And while care in damage for loss or misdelivery will be paid. Their contents will in no case be responsible for loss, injury or damage arising without the negligence or fault of the Company or its agents. All property is subject to stoppage when necessary.

Goods in bundles will not be considered as properly packed, and the Company will not be responsible for any loss of parts or of the whole of such goods.

No allowance for deficiency of Leakage, Breakage or other Perils, if not covered with customs will be made.

5. The Corporation will not be responsible for damage occasioned by delays from storm accidents or unavoidable causes, by fire or injury to Property, by the dangers of River, Lake or the elements, or other jurisdiction [illegible] nor liable for the non-delivery of such property in any other time, than in the time for any particular article.

The charges on lettered marble must always be prepaid.

The charges on perishable property must always be prepaid.

6. The Corporation will not receive Valuable property, [illegible] unless contracted for in writing, nor will it be responsible for any loss or damage arising from or in the delay of shipment, however occasioned, but they will forward with diligence with as reasonable dispatch as the general business of the Corporation will permit, after the property has been placed in the depot.

8. The Corporation will only be liable for damage to property by fire, while in their freight depot or warehouse, the Company will not be liable.

The charges on lettered marble must always be prepaid.

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by [illegible] or other animals, however occasioned, but they will forward with diligence with as reasonable dispatch as the general business of the Corporation will permit, after the property has been placed in the depot.

11. Goods or property consigned to any place of the Company's line of road, or to any point or place beyond its termini, will be sent forward only on the usual days and hours for the regular business of the Corporation, known to the station agent at said warehouse willing to receive the same unconditionally, for transportation, the Company acting for the purpose as carriers. The carrier or company shall be liable for any loss, damage or injury to property after the same shall have arrived at the within mentioned warehouse, and notice given for delivery to the consignee or to the consignee's clerk has authority to alter or vary any of these Rules and Conditions.

12. No goods or property shall be subject to a minimum charge for tracking and rental of $1.00 per car for each 24 hours, detention or fractional part thereof after the expiration of 48 hours time to unload, after notice of arrival has been given to consignee, and after the expiration of 48 hours from arrival at destination, such as a warehouse or the cars or vehicle and delivery to a warehouseman, and the consignee or [illegible] shall pay the C., M. & St. P. Ry. Company the regular Drayage charges, the said warehouseman or the said Railway Company shall have a lien upon the freight in addition to the car [illegible] charges and back charges.

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44 EXHIBIT "E."

No.....

Station, LA X, WIS., Oct. 16, 1894.

RECEIVED from W. W. CARGILL CO.

in apparent good condition.....

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY		WEIGHT
L. Lemcke & Co.	St. P.	17272	40650
St. Louis, Mo.	M. & N	1232	50400

Duplicate.

Exhibit E.

As described above, contents and value unknown, to be transported by the **CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.**, over the line of this Railroad to their warehouse at .... ready to be delivered at said warehouse, to the consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company or carrier, it being expressly agreed that said property is to be transported upon and in all respects subject to the regulations of the published tariff of said company and to the conditions printed and indorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property, and it being further expressly agreed that this Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property, after its arrival at its warehouse aforesaid, or for any loss or damage thereto or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

(OVER.)

J. C. HEITBAHN, Agent.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Bonds Certificates, evidences of property or other writings, or be responsible for their loss or value, unless the charges of Bank Note Detectors, or other agents of the Corporation to examine the same, be paid in addition to the charge of Bank Note Detector or Reward, for himself or for the Company, on or for such articles.

2. No Conductor, or other agent of the Corporation, is authorized to receive any Gold or Silver in Bullion, or manufactured articles of gold and silver, or Jewelry, Watches, Pictures, Plated Articles, Glassware, Musical Instruments, Silks, Laces, Embroideries, Cloths, Clothing, Furs, Hats, Caps, Boots, Shoes, Rubbers, Leather and Leather Goods, Which it will be responsible, unless with such articles when delivered, is also delivered a memorandum in writing stating the character and kind of articles and their value, and unless the proper extra price for the carriage and responsibility on such articles is paid.

3. Carriages and Sleighs, when taken, Machinery, stoves and castings, Marble, Looking Glasses, Mineral Acids, Sweet Potatoes, all Liquids put up in glass or earthenware, Fabrics Water and Furniture will only be loaded and unloaded at the risk of the owner, and the Company will not be responsible for breaking thereof, unless special agent is employed to the contrary.

4. Gunpowder and combustible articles of any description will be taken only on special terms and rates. If found secreted among other goods they will be taken from the cars and stored in the depot at the risk of the owner thereof.

5. Articles will not be received for transportation unless properly packed in suitable cases, Boxes, Bales or Packages, and each such case, box, bale or package is marked with the name of the Consignee, and of the Station to which it is to be forwarded, and the name of the consignor, and all such packages must be distinctly marked with the name of the consignee, and the name of the station to which they are to be forwarded, and the name of the consignor, and no one will be responsible for loss, injury or damage which might have been avoided by a skillful and more careful and sufficient packing, or marking, or which arises from the nature of the property or defect of the package. Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for delivery of Lemons, Oranges or other fruit, if not covered with canvas will be made.

6. The Corporation will not be responsible for delays occasioned by storms, floods, accidents, or other causes beyond its control, nor for any loss or damage arising from any delay or stoppage, however occasioned, but they will forward the same with as reasonable dispatch as the general business of the Corporation will permit.

7. The Corporation will not be responsible for any loss or damage to property, by particular train, nor in time for any particular market, nor are they to be responsible for loss or damage arising from any delay or stoppage, however occasioned, but they will forward the same with as reasonable dispatch as the general business of the Corporation will permit.

8. The Corporation will not be responsible for any loss or damage to property after the property has been placed in their depot, or upon the platform of the depot ready for delivery, whether notice has been given or not. But for loss or damage to property by fire, while in their freight depot or warehouse, the Company will not be liable.

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by receiving, transporting, delivering, storing, or keeping live stock or animals of any description, transported or carried upon their railway, or in their cars or vehicles.

11. The Corporation will not be responsible for the loss of, or damage to any article by fire or other wise, in the Grounds or Warehouses of the Company, unless the same be caused by its negligence.

12. Goods will be received and carried to any place on the Company's line of road, or to any point or place beyond its terminus, will be sent forward with as reasonable dispatch as the general business of the Corporation at its aforesaid stations will admit of, but they are not to be held responsible for any damage however caused to live stock or animals of any description, transported or carried upon their railway, or in their cars or vehicles.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions

All cartload freight shall be subject to a minimum charge for trucking and hauls of 40 cts per car. Freight will be delivered at the warehouse of the consignee, free of charge, within 24 hours after arrival at destination, and after the expiration of 72 hours, the Company shall be entitled to collect and store the freight in a warehouse as often as it shall see fit, and deliver it to warehouseman, to hold for the consignee, and the Company shall have a lien upon the freight for storage and warehousing same, and for such expense this company may have a lien upon the freight in addition to its own freight charges and such charges.

EXHIBIT A.

45

Form 187.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

ALL RAIL

THROUGH FAST FREIGHT LINE.

BONDED.

J. H. HILAND, General Freight Agent, Chicago.

No ..... Dub 11/20 1894.

Received from Carr R. & B. Co Oct 24 94

in apparent good order by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, the following described packages marked and numbered as per marginal entry, subject to the conditions and regulations of the published tariffs of said Company, to be transported over the line of this Railroad to ..... a company or carrier [illegible] the same not to be forwarded beyond the limits of the ..... and delivered after payment of freight or bills ... and order to ..... at the company's depot, at which the same are to be delivered to the consignee; but this Company guarantees that the rate of freight for the transportation of said packages shall not exceed rates noted as charges of this Bill of Lading and charges advanced by this Company: Provided contents of packages are correctly stated in Railroad Receipts (original and duplicate) on which this Bill of Lading is based, subject to the following conditions:

This Company shall not be responsible for the loss of packages or contents which are unknown, or for leakage of any kind of Liquids, breakage of any kind of Glass, Carboys of Acid or Articles packed in Glass, Stoves or Stove Furniture, Carriages, Pottery, Cordage, Furniture, Show Cards, Engravings and Paintings, Machinery and Castings, Hay, Hemp, Cotton or any article whose bulk renders it necessary to transport in open cars, or for damage to perishable property, or for loss or damage by fire, or for loss or damage by the elements, or for loss of weight of Grain, or Coffee in bags, or Rice in casks, nor for loss from Rust, Heat, or Fumes, or Outgrown hoops, nor covered by Canal, or for damage of any kind, or for any

45 Afterwards, to wit: on the 4th day of September, in the year last aforesaid, came again the intervenors by their solicitors, and filed in the above-entitled cause the following notice to file replication, and replication, to wit:

Notice. Filed Sept. 4, 1895.

In the Circuit Court of the United States for Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK
vs.
THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } In Chancery.

To Messrs. Bluford Wilson and P. B. Warren, solicitors for the Chicago, Peoria & St. Louis Railway Company:

Take notice that we will, on Wednesday at 2 p. m., or as soon thereafter as counsel can be heard, in the court-room of Judge Allen, in the Federal court building, in Springfield, Illinois, move said court for leave to file the replications of the intervening petitioners herein, as of the 15th day of March, a copy of which replication is hereto attached.

You may appear at that time if you see fit.

BURTON HANSON,
GEORGE P. CARY,
Solicitors for Intervening Petitioners.

Dated September 4, 1895.

Received copy of the above notice and attached replication.
Sept. 4, 1895.

BLUFORD WILSON,
P. B. WARREN,
Solicitors for Defendant Railway Company.

Replication.

In the Circuit Court of the United States for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK
vs.
THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } In Chancery.

The Replication of the Chicago, Milwaukee & St. Paul Railway Company, W. W. Cargill Company, T. McMichael & Son,
46 S. Y. Hyde Elevator Company, Huntting Elevator Company, Jacob Rau, Gilchrist & Company, Henry Rippe, and Carr, Ryder & Engler Company.

Replication. Filed Sept. 4, 1895.

Intervening petition to the answer of the Chicago, Peoria and St. Louis Railway Company.

The repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of ex-

ception, which can or may be had or taken to the manifold insufficiencies of said answer of the said defendant, for replications thereunto, say: that they will aver, maintain and prove their intervening petitions to be true, certain and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants, without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray, as in and by their said intervening petitions have already prayed.

BURTON HANSON &
GEORGE P. CARY,
Solicitors for Intervening Petitioners.

Dated September 4, 1895.

(Indorsed:) Filed Sept. 4, 1895. Stuart Brown, M. C.

Afterwards, to wit: on the 24th day of October, in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Leave to File Amended Petition.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THURSDAY, *October* 24, 1895.

Present: Hon. William J. Allen, district judge.

THE MERCANTILE TRUST COMPANY OF NEW YORK
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILROAD COMPANY.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee and St. Paul Railway
47 Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist & Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, and Thomas McMichael and William McMichael, under firm name of McMichael & Son, and Henry Rippe.

Said cause coming on to be heard upon the pleadings filed herein, and the testimony heretofore taken before the master in chancery, and upon argument of counsel, and the court being fully advised in the premises, it is hereby ordered that said petitioners have leave to file an amendment to their said petitions, and that the defendant have leave to amend its answer heretofore filed in said cause to said petitions.

Dated October 24, 1895.

Afterwards, to wit: on the 18th day of November, in the year last aforesaid, came again the receiver by his solicitors and filed in the clerk's office of said court, his amended answer, which answer is as follows, to wit:

Amended Answer. Filed Nov. 18, 1895.

In the Circuit Court of the United States for Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY. } Consolidated. In Equity.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau, James N. Gilchrist & Company, the Hunting Elevator Company, McMichael & Son, and Henry Rippe.

Amended Answer of the Receiver to the Amended Petition of the Above-named Intervenors.

Now comes the receiver herein by Bluford Wilson and P. B. Warren his solicitors, by leave of court first had and obtained, and restates all the denials, admissions and averments contained in the answer of this receiver filed to the respective intervening petitions of the above-named petitioners on the 11th day of March, 1895, and for answer to the amended petitions filed by the above-named intervenors on the 24th day of October, 1895, and now and at all times hereafter saving to himself all benefit and advantage of exception or otherwise, to the many errors, uncertainties and
48 other imperfections in the said amended petitions contained, for answer thereunto this receiver says:

That he expressly denies that upon the arrival of the cars mentioned and described in said petitions at East St. Louis, and while the same were still in the *petition* of this defendant, this defendant negligently caused and permitted them, together with their contents to be placed upon certain tracks in close proximity to the said wooden warehouse referred to, and described in the amended petition of said intervenors.

And this receiver further expressly denies that at any time before the damage and destruction of said cars and contents he had knowledge of the character of said wooden warehouse, or that he negligently and carelessly caused or permitted said cars and their contents to be placed upon said side track near said warehouse, and that they remained thereon for several days; but this receiver avers the facts to be:

That after the delivery of the said cars and their contents to this receiver, and before the filing of the said intervening petitions, the said cars and their contents were delivered by this receiver, in the due course of business, to the Terminal Railroad Association of St.

Louis: and that while in the possession, and under the care of said Terminal Association, the said cars and contents were damaged or destroyed.

That the property mentioned in said petitions was at the time of said fire in the control, care and custody of the said Terminal Railroad Association of St. Louis, under a contract made and entered into by and between the said railroad association and the Chicago, Peoria & St. Louis Railway Company, on the 1st day of August, 1892, by which said association undertook to handle this receiver's trains, care for his engines and cars, and handle and care for his freight, including the property mentioned in said intervening petitions, a copy of which contract was introduced in evidence by the intervenors on Tuesday, August 27, 1895, before Stuart Brown, master in chancery of this court, at the taking of evidence to be used in this matter; said contract is in said record marked "Exhibit A," and reference is hereby made to the same, and the same is prayed to be taken as a part hereof.

This receiver further answering, avers that by reason of his having turned over the cars and contents mentioned in said intervening petitions to the said Terminal Railroad Association of St. Louis, that it, the said railroad association, negligently caused and permitted said cars and contents to be placed upon certain tracks in the manner set out in said amended petition; that after delivering said cars and contents to said railroad association this receiver had no control over the same, and could in no manner direct the
49 placing of said cars in the yards of said railroad association at East St. Louis with reference to their being placed in close proximity to said wooden warehouse.

This receiver further answering, avers that all of the said intervening petitioners had knowledge, through their consignees, of the condition of affairs that existed in the yards of the said railroad association prior to and at the time said cars and contents were damaged and destroyed.

This receiver further answering, avers that the cars and contents mentioned in the said intervening petitions after being placed remained in close proximity to said wooden warehouse until the same were damaged and destroyed, with the full knowledge, approval and consent of the said intervening petitioners, through their agents, their respective consignees; and in fact this remained for the convenience of said consignees, and at their risk.

Therefore this receiver denies that the petitioners are entitled to the relief or any part thereof demanded either in the original petitions or the amended petitions filed herein, and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

BLUFORD WILSON &
P. B. WARREN,
Solicitors for Receiver.

(Indorsed:) Filed November 18, 1895. James T. Jones, clerk.

Afterwards, to wit: on the 20th day of November, in the year of our Lord one thousand eight hundred and ninety-five, came again the complainants in the above cause and filed in said court in said cause the following replication, to wit:

Replication to Amended Answer.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Hunting Elevator Company, and Thomas McMichael & William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

Replication of the Above-named Intervening Petitioners to the Amended Answer of the Receiver Herein.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said amended answer, for replication thereunto, say:

That they will aver and prove their said amended intervening petitions to be true, certain and sufficient in law to be answered unto; and that the said amended answer of the receiver is uncertain, untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said amended answer contained, material or effectual in law to be replied unto, confessed, or avoided, traversed or denied, as true; all which matter and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by their said intervening petitions they have already prayed.

BURTON HANSON &
GEORGE P. CARY,
Attorneys to said Intervenors.

(Indorsed:) Filed November 20, 1895. James T. Jones, clerk.

Afterwards, to wit: on the 14th day of January, in the year of our Lord one thousand eight hundred and ninety-six, came again the receiver and filed in said court in said cause the following motion, to wit:

Notice and Motion.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company;
51 the Huntting Elevator Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

To Burton Hanson and George P. Cary, solicitors for defendants:

Please take notice that, on Wednesday, the 15th day of January, 1896, we will present a motion, a copy of which is attached hereto, to his honor, Judge Allen, in his court-room, at 10 o'clock in the morning, or as soon thereafter as counsel can be heard, and ask that an order be entered thereon.

BLUFORD WILSON,
Solicitor for Receiver of the Chicago, Peoria & St. Louis Railway Company.

The above notice is hereby acknowledged this — day of January, 1896.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

Motion of Receiver.

Motion.

Now comes C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company, by Bluford Wilson and P. B. Warren, his

solicitors, and moves the court for leave to amend a certain stipulation entered into in the above-entitled cause on the 27th day
52 of August, 1895, by and between the solicitors of record of the respective parties, in the following particular-, to wit:

First. At page 2, beginning on the sixth line in paragraph 3, strike out the following: "That receipts of which Exhibits B, C, D and E, attached to this stipulation, are copies, were given by said railway company at the time said barley was received by it for transportation," and beginning on the eleventh line of said paragraph 3, on page 2, strike out "belonged to the petitioner, and."

Second. In paragraph 4, beginning on the second line of page 3, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were given by said railway company at the time said barley was received by it for transportation;" and in the said paragraph 4, on the seventh line of said page 3, strike out "belonged to the petitioner, and."

Third. On page 3, beginning on the sixth line of paragraph 5, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were given him by said railway company at the time said barley was received for transportation;" and on said page 3, beginning on the eleventh line of said paragraph 5, strike out "belonged to the petitioner, and."

Fourth. On said page 3, beginning in the eighth line of paragraph 6, strike out "that receipts, the same in form as Exhibits B, C, D and E, attached to this stipulation, were given to them by said railway company at the time said barley was received for transportation;" and on page 4, beginning in the fourth line of said page, strike out "belonged to the petitioners, and."

Fifth. On page 4, beginning in the sixth line of paragraph 7, strike out "that receipts, the same in form as Exhibits B, C, D and E, attached to this stipulation, were given to it by said railway company at the time said barley was received for transportation;" and on said page 4, beginning in the twelfth line of said paragraph 7, strike out "belonged to the petitioner, and."

Sixth. On page 4, beginning in the eighth line of paragraph 8, strike out "that receipts, the same in form as Exhibits B, C, D and E, attached to this stipulation, were given to them by said railway company at the time said barley was received for transportation;" and on page 5, in line two of said page, strike out "belonged to the petitioners, and."

Seventh. On page 5, beginning in the eighth line of paragraph 9, strike out "that receipts, the same in form as Exhibits B, C, D and E, attached to this stipulation, were given him by said railway company;" and on page 5, beginning in the fifteenth line of said paragraph 9, strike out "belonged to said Rippe, and."

And for grounds of said motion this receiver respectfully
53 shows unto this court that said stipulation was entered into for the purpose of saving the labor and expense of making proof thereof; that the same was prepared by the solicitor for the intervening petitioners, and was signed by your receiver's solicitor

under a misapprehension of the true facts, as the same have since developed in the progress of this cause.

That this receiver had no means, at the time said stipulation was entered into, of knowing that the allegations of the facts herein sought to be stricken out were untrue, as the same were wholly and exclusively within the knowledge of the petitioners. That when said stipulation was presented to his solicitor as a statement of true facts, he accepted it as the same by reason thereof; that the knowledge that the same were untrue has come to him through the evidence of the intervenors themselves.

And petitioner files herewith, and asks the same to be taken as a part hereof, an affidavit in support of the foregoing, and also to the further effect that this motion is not made with a view to vex or delay the said petitioners in the prosecution of their said claim; that the same is made to avoid wrong and injury to this petitioner.

C. H. BOSWORTH,
Receiver of the Chicago, Peoria and St. Louis Railway Company.

BLUFORD WILSON,
P. B. WARREN,
Solicitors for Receiver.

(Indorsed:) Filed January 14, 1896. James T. Jones, clerk.

Afterwards, to wit, on the day and year last aforesaid the receiver filed in said court in said cause, his affidavit in support of the foregoing motion, which affidavit is as follows, to wit:

Affidavit in Support of Motion.

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY OF NEW YORK
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee and St. Paul Railway Company, *et al.*

UNITED STATES OF AMERICA,
Southern District Illinois, } *ss:*

Bluford Wilson, being duly sworn, on oath deposes and
54 says, that he is solicitor for C. H. Bosworth, receiver of the Chicago, Peoria and St. Louis Railway Company; that on the 27th day of August, 1895, for and in behalf of said C. H. Bosworth, he entered into a stipulation with Burton Hanson, as solicitor for the Chicago, Milwaukee and St. Paul Railway Company, and various intervening petitioners; that when he entered into said stipulation he believed it to be what it purported to be, to wit, a

statement of true facts; that inasmuch as said Burton Hanson requested him to sign the stipulation, he believed that the same was prepared by said Burton Hanson; that inasmuch as certain of the facts therein alleged were wholly within the knowledge of the clients of said Burton Hanson, this affiant, at that time, had no means of knowing that the same were untrue; that the knowledge that the said facts were untrue has come to him through the evidence of the intervenors themselves; and this affiant further deposes and says, that the motion of the receiver herein to amend said stipulation by striking out the allegations of all the facts which have developed in the progress of the trial to be untrue, is not made with a view to vex or delay the said petitioners in the prosecution of their said claims, but that the same is made to avoid a wrong and injury to the said receiver.

BLUFORD WILSON.

Subscribed and sworn to before me this 13th day of January, 1896.

P. B. WARREN,
Notary Public.

(Indorsed:) Filed January 14, 1896. James T. Jones, clerk.

Afterwards, to wit, on the 23d day of January, in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order.

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY.

In the matter of the intervening petition of the Chicago, Milwaukee and St. Paul Railway Company and others.

This cause coming on to be further heard upon the motion of the receiver in the above-entitled cause, for leave to amend a certain stipulation entered into between the parties thereto on the 27th day of August, 1895, and the court having heard argument
55 of counsel, and being fully advised in the premises, upon consideration thereof, does hereby order, adjudge and decree that the said motion of the said receiver be, and the same is hereby, granted. And the said receiver is authorized to amend the said stipulation in the particulars set out in his said motion.

And it is further ordered by the court that the petitioners and the receiver be, and they are hereby granted further time to introduce evidence in support and in rebuttal of the allegations of fact stricken out of said stipulation by this order.

Petitioners' evidence to be closed on February 7, 1896, and the receiver's evidence to be closed on February 22, 1896.

Afterwards, to wit: on the 8th day of April, in the year last aforesaid, came the petitioners, by their solicitors, and filed in said court, in said cause, the following amendment to their petitions, to wit:

Notice.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant, *vs.* CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY, Defendant.	Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist & Colin F. Bell, partners under the firm name of Gilchrist & Company; the Hunting Elevator Company, and Thomas McMichael & William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

To Honorable Bluford Wilson and P. B. Warren, Esq., attorneys for the receiver of the Chicago, Peoria & St. Louis Railroad Company:

Please take notice that on the 24th day of October, A. D. 1895, at 9 o'clock in the a. m., or as soon thereafter as counsel can be heard, the above-named petitioners will apply to his honor William J. Allen, judge of said court, at his rooms in Springfield, for an order allowing and permitting said petitioners to amend their said petitions, a copy of which is attached to this notice and is hereby served upon you.

Dated October 15, 1895.

BURTON HANSON,
GEORGE P. CARY,
Attorneys for said Petitioners.

56 *Affidavit.*

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist & Colin F. Bell, partners under the firm name of Gilchrist & Company; the Hunting Elevator Company, and Thomas McMichael & William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

STATE OF ILLINOIS, *County of Cook,* } *ss:*

Burton Hanson, being duly sworn, deposes and says that he is one of the attorneys for the above-named petitioners, and has had the principal charge of the proceedings herein in behalf of said petitioners; that the amendment which said petitioners desire to make to each of their said petitions herein is not made for the purpose of vexation or delay, and that the matter of said proposed amendment is material and could not, with reasonable diligence have been sooner introduced into said petitions; that the subject-matter of said amendment was wholly unknown to the petitioners herein until such matters were testified to herein before the master in chancery, to whom these petitions were referred, by witnesses produced on said hearing in behalf of said receiver, and that said proposed amendment to said petitions is based wholly upon the testimony given by said witnesses before said master, and said amendment is made for the purpose of making the allegations of said petition conform with the proof as made by said receiver.

BURTON HANSON.

Subscribed and sworn to before me this 15th day of October, 1895.

[SEAL.] J. R. DICKENSON,
Notary Public.

57 *Amendment to Petitions.*

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant, *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY Company *et al.*, Defendants.	Consolidated Cause.

And now comes the intervenors herein, The Chicago, Milwaukee & St. Paul Railway Company, The Carr, Ryder & Engler Company, The S. Y. Hyde Elevator Company, The W. W. Cargill Company, Jacob Rau, James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; The Huntting Elevator Company, Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe, by Burton Hanson and George P. Cary, their attorneys, and by leave of court first had and obtained, restate all the allegations contained in the petition of each one of the foregoing intervenors, as hereinbefore made and filed herein, and for a further, separate and distinct ground of recovery herein states as follows:

That upon the arrival of the cars mentioned and described in said petitions at said East St. Louis, and while the same were still in the possession of said receiver, said receiver negligently caused and permitted them, together with their contents, to be placed upon certain tracks in close proximity to a large wooden warehouse filled with bailed and loose hay, and through which said warehouse locomotive engines were frequently passing and repassing during all hours, night and day; that said wooden warehouse was open at the sides and ends, and had railroad tracks passing through it over which locomotive engines frequently passed, and said hay was generally exposed to fire escaping from said locomotives; that said warehouse and hay was easily ignitible, and on account of the inflammable condition of said hay, the large quantity thereof, and the dimensions of said wooden warehouse, the same, if set on fire, would burn with great rapidity and produce a great conflagration, all of which the receiver well knew, yet notwithstanding all this, he negligently and carelessly caused and permitted said cars and their contents to be placed upon said side track, near said warehouse, and to remain thereon for several days, when said hay and warehouse were in some manner set fire to, and the same burned so rapidly, and produced such a large conflagration, that said cars and their contents were damaged and destroyed, as stated in said

58 several petitions, and the petitioners damaged in the manner and to the extent and amount, as therein stated.

BURTON HANSON &
GEORGE P. CAREY,
Attorneys for Petitioners.

STATE OF ILLINOIS, } ss:
County of Cook, }

Burton Hanson, being duly sworn, deposes and says that he is one of the attorneys of the above-named petitioners; that he had read the foregoing proposed amendment to said petitions, and knows the contents thereof, and that the same is true, as he verily believes; that the grounds of his belief are information derived by him from the testimony given by witnesses produced in behalf of the receiver herein, before Mr. Stuart Brown, master in chancery, to whom these petitions have been referred for hearing.

BURTON HANSON.

Subscribed and sworn to before me this 15th day of October, A. D. 1895.

[SEAL.] J. R. DICKENSON,
Notary Public.

(Indorsed:) Filed April 8th, 1896. James T. Jones, clerk.

Afterwards, to wit, on the 10th day of April in the year of our Lord one thousand eight hundred and ninety-six, came Stuart Brown, Esq., one of the masters of this court, and filed in the clerk's office of said court his report, on said intervening petition, which report is as follows, to wit:

Report of Master in Chancery.

In the Circuit Court of the United States for the Southern District of Illinois.

MERCANTILE TRUST COMPANY *vs.* CHICAGO, PEORIA & ST. LOUIS. } Consolidated Cause.

Intervening petition of Jacob Rau.

Your subscriber, one of the masters in chancery of this honorable court, to whom the said intervention in the above-styled cause has been referred, would respectfully report that he has taken evidence, heard oral argument and had briefs presented upon the questions raised by the proof and herewith he offers his conclusions.

59 *The Pleadings*

Are the same in effect as were set out in the report of your subscriber on claim of T. McMichael & Son filed April 8th, 1896, and to which reference is hereby made.

The difference is shown in the amended stipulation as to proof which in this intervention was as follows:

"That the petitioner, Jacob Rau, of Wykoff, Minnesota, at the dates and times, and at the place in his petition mentioned, delivered to the Chicago, Milwaukee & St. Paul Railway Company, two (2)

car-loads of barley in cars as stated in his petition, consigned to the Orthweine Grain Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that written receipts of which Exhibits B, C, D & E, attached to this stipulation are copies, were afterwards given by said railway company, as testified to by the witnesses, S. Y. Hyde and E. J. Tull; that said barley was destroyed by fire at said East St. Louis, during the night of October 28th, 1894; that said barley at the time it was so destroyed belonged to the petitioner, and was of the value of eleven hundred forty-four dollars and $\frac{7}{100}$ ($1,144.07); that the petitioner was damaged in that sum, and is entitled to recover that amount and interest, if it shall be adjudged that it is entitled to recover in this proceeding."

There is no dispute as to ownership of this barley, as it is admitted it was sent to Orthwein Grain Co. to be sold for owner on commission.

There is also no contention that the evidence shows any unreasonable detention of the barley in East St. Louis.

The question, then, alone remains: Were the two cars of barley claimed by petitioner delivered by the C., P. & St. L. R'y to the Terminal R. R.?

The evidence shows that the intervenor shipped by Chicago, Milwaukee & St. Paul R. R. Company on October 10, 1894, car No. 46064, and on the 16th day of October, 1894, car No. 43222, both loaded with barley and both consigned to Orthwein Commission Company, of St. Louis, Missouri, via East St. Louis, on commission. These cars, like those in T. McMichael & Son intervention, went to Rock Island, then by the R. I. & P. to Peoria, then by C., P. & St. L. to E. St. Louis, Illinois, and were placed on the Y tracks of Terminal Association on the 25th day of October, 1894, and were left upon the C., P. & St. L. deposit tracks, set apart for their use by the Terminal R. R., but not exclusively used by the C., P. & St. L. On the night of Sunday, October 28th, they were, with their contents, destroyed by fire. No notice of their arrival was given to owner.

60 No waybill was delivered to the Terminal R. R. giving direction as to further carriage. No junction report was issued by receiver to the C., M. & St. P., as was a general custom when cars were delivered by a connecting carrier to another railroad.

Conclusion.

For these reasons, and for others similar to those expressed in report on T. McMichael & Son claim (to which reference is hereby made), I find that the barley in question was held by the receiver, Bosworth, as a common carrier, and that the intervenor has a just claim against said receiver in the sum of eleven hundred and forty-four dollars and $\frac{7}{100}$ ($1,144.07), with interest thereon at the rate of 5% per annum from date of loss to this date, and that the same should be paid as the court may order.

All of which is respectfully reported this 7th day of April, 1896.

STUART BROWN, *M. C.*

(Indorsed:) Filed April 10, 1896. James T. Jones, clerk.

Exhibit to Report of Master.

T. McMichael & Son report.

In the Circuit Court of the United States for the Southern District of Illinois.

MERCANTILE TRUST COMPANY *vs.* CHICAGO, PEORIA AND ST. LOUIS. } Consolidated Cause.

Intervening petition of Thomas McMichael and William McMichael, doing business under the firm name of T. McMichael & Son.

Report of Master.

To the Hon. William J. Allen:

Your subscriber, one of the masters in chancery of this honorable court, to whom the said intervention in the above-styled cause has been referred, would respectfully report that he has taken evidence, heard oral argument and had briefs presented upon the questions presented by the proof, and herewith he offers his conclusions.

The Pleadings.

An intervention filed January 26, 1895, alleges among other things that on the 16th day of October, 1894, the petitioners delivered to the Chicago, Milwaukee & St. Paul Railway Company four
61 car-loads of barley in cars of said company, numbered 37506, 12336, 2598, 4126, and on the 19th day of the same month two other car-loads of barley in cars of said company, numbered 3728 and 18126; and on the 22d day of said month, two other car-loads of barley in cars of said company, numbered 10720 and 6842; also on the 6th of said month one car-load of barley in car of said company, numbered 36088, and on the 22d of said month, two other car-loads of barley in cars of said company, numbered 4268 and 7552; that all of said car-loads were consigned to Teichman Commission Company, St. Louis, Mo., via East St. Louis, Ills.; that all were transported by said C., M. & St. P. Company to Rock Island, Ill., and there delivered to the Rock Island & Peoria Railway Company, and by said last-named company transported to Peoria, Illinois, and delivered to the Chicago, Peoria & St. Louis Railway Company, and were by it transported as far as East St. Louis, and while still in transit and on their way to destination, and in the possession and under the control of said C., P. & St. L. R'y Co. the first-mentioned eight cars of barley and their contents were destroyed by fire on the evening of the 28th day of October, 1894, and damage resulted to petitioners of $2,942.56; that the last-named three cars and the barley contained therein *was* partially destroyed by said fire, and after its disposal damaged petitioners $226.68, making a total loss or damage to said petitioners of $3,169.24; petitioners

further allege that said barley belonged to them at the time it was so damaged, and that they were the sole owners thereof; petitioners ask for relief and that receiver pay said amount of $3,169.24 as a just claim prior to rights of mortgage bondholders.

On the 11th day of March, 1895, C. H. Bosworth, receiver, filed his answer, alleging that after delivery to the C., P. & St. L., and before the filing of the intervention, the said cars and their contents were delivered, in the due course of business, to the Terminal Railroad Association, of St. Louis, and while in their possession said cars were destroyed; and further that they were destroyed by a fire negligently caused by and originated in a spark coming from a certain engine belonging to and being operated by and in the service of the Terminal R. R. Association; and, further, while in the care and custody of said Terminal Association, under a contract whereby the Terminal railroad agreed to give the said receiver terminal facilities, handle trains, care for engines and freight, under a regular interchange of business and according to custom, exercising due care and caution, but said Terminal Association willfully and negligently stored said property in close proximity to a certain load of hay, which was fired by sparks from a certain passing switch-engine of said Terminal Association; and further said Terminal
62 Association caused said fire, by storing said inflammable hay in a veritable fire-trap; receiver denies responsibility, and asks to have Terminal R. R. made a party defendant.

On May 13, 1895, Bosworth, receiver, files a cross-petition, stating that all property mentioned in interventions was in care and custody of Terminal Association under a contract by which said Terminal R. R. was to give receiver terminal facilities, etc., and it was the duty of said association to exercise due care and caution in safe keeping and handling said cars, but it wilfully and negligently stored them in a dangerous place; that said cars were delivered to Terminal Association by receiver in due course of business, and while in the possession and under the care of said association were destroyed; and, although they allowed said cars mentioned in said interventions to be destroyed, they did save all of their said cars; asks for a rule to show cause why it should not be made a party defendant; June 1, 1895, rule entered, directed against Terminal R. R. Association, requiring it to show cause on or before June 15, 1895, why it should not be made a party defendant, etc.

June 15, 1895, Terminal R. R. Association by its solicitor, moves court to discharge rule of June 1st, for lack of jurisdiction and other reasons stated. No further action was taken on said rule and said Terminal R. R. Association was not made a party defendant.

August 27, 1895, a stipulation was entered into in this intervention (with others) by counsel for purposes of saving labor and expense of making proof, which said stipulation was afterwards, on January 23, 1896, amended by an order of court, and which stipulation was, in its amended form, as follows:

"That the petitioners, Thomas McMichael and William McMichael are partners engaged in business at McGregor, Iowa, under the firm name of T. McMichael & Son, as alleged, and that at the

dates and times and at the place in their petition mentioned, they delivered to them Chicago, Milwaukee & St. Paul Railway Company eight (8) car-loads of barley, in cars, as stated in their petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis, Illinois. That written receipts, of which Exhibits B, C, D, and E. attached to this stipulation are copies, were afterwards given by said railway company, as testified to by witnesses S. Y. Hyde and E. J. Tull. That said barley was destroyed by fire at said East St. Louis during the night of October 28, 1894; that said barley, at the time it was destroyed, belonged to the petitioners, and was of the value of twenty-nine hundred and forty-two dollars and $\frac{56}{100}$ ($2,942.56); that the petitioners were damaged in that sum, and are entitled to recover that amount, with interest, if it shall be adjudged that they are entitled to recover in this proceeding."

63 (This omits three cars partially destroyed as above stated.)

September 4, 1895, replication, general, to answer of defendants, filed as of March 15, 1895.

October 24, 1895, amendment to petition filed. Alleges for further ground of recovery that upon the arrival of the cars mentioned and described in said petitions at said East St. Louis, and while the same were still in the possession of said receiver, said receiver negligently caused and permitted them, together with their contents to be placed near a wooden warehouse open at sides and ends and filled with combustibles, etc.

November 18, 1895, amended answer of receiver filed. Denies cars were placed by defendant, while some were still in possession of defendant, negligently near warehouse; further expressly denies knowledge of character of said wooden warehouse, affirms they were delivered to and in custody of Terminal Association under contract etc.; had no control over care, etc., affirms that intervening petitioners had knowledge, through their assignees, of condition of affairs; further that the cars and contents remained in close proximity to wooden warehouse with full knowledge, approval and consent of the said intervening petitioners, through their agents, the consignees, and thus remained for the convenience of said assignees, and at their risk.

The Evidence as to Ownership and Shipment.

From the evidence it appears that the firm of T. McMichael & Son sold to Teichman & Company by sample, 15,000 bushels of barley in October, 1894, at 58 cents net per bushel in St. Louis, Missouri. The eleven cars specified by number in the petition were shipped from McGregor, Iowa, at the time named, over the C., M. & St. P. railway, and freight to St. Louis was paid by shippers. The cars were delivered to Rock Island & Peoria R. R. and by these to C., P. & St. L. at Peoria, Illinois.

From the evidence it would appear that the custom was to send a sample of barley by express to commission-house at St. Louis, which made a bid upon it. If the bid was accepted the grain was deliv-

ered to the C., M. & St. P. for delivery at St. Louis, via East St. Louis, subject to inspection and weighing.

These cars were transported to East St. Louis by the last-named railroad on November 2, 1894; W. R. Bradley, car accountant of the C., P. & St. L., reported the first eight car numbers burned by fire at East St. Louis, October 28, and last three car numbers as damaged by fire at East St. Louis, October 28th.

On October 30th the consignee Teichman Commission Company wrote to shipper "We are convinced that several of *your cars* were in the lot of burned and damaged barley. We would now
64 suggest that you give notice to your railroad at your end, to push the Jacksonville Southeastern line here, to adjust loss sustained, as speedily as possible."

On November 2d, the consignee telegraphs "Will you replace the burnt barley at once to fill sale."

To which shipper answered:

"Yes, will load tomorrow."

On November 2d, consignee writes as follows:

"We are in receipt of your telegram saying you will replace your barley lost by the late fire; we now have the assurance of the receiver of the J. & S. E. R. R. that they are amply able and anxious to settle the loss of barley by fire, as speedily as possible, which, however, may be delayed by the question arising if the barley is covered by their insurance policy or by the one held by the Terminal Railway Company, which will soon be determined, as that company is co-operating with the J. & S. E. R. R. to effect an adjustment."

On November 3rd, the shipper writes consignee:

"We have made bill for cars X X X and sent same to C., M. & St. P. R. R. and presume they will pay us as soon as they look it up."

Conclusions as to Ownership.

Notwithstanding the stipulation of August 27, 1895, quoted above, the claim is now made that petitioners are not the owners of this barley, but have parted with their title to consignee. Taken in its barest legal sense, delivery is made by a vendor when he gives up his goods to a common carrier for transportation. Even law courts, however, do not hold this rule without exception, but where there is anything to be done as of weighing or measuring, they hold the performance of these things a condition precedent. There were goods sold by sample and the vendee had the right to refuse to accept them if not up to grade. But further, it is very apparent from the acts of the parties that they intended the barley to be delivered at St. Louis. The shipper's willingness to assume responsibility of an action against the carriers is not, of course, conclusive, but the intention of the parties is clearly displayed by the correspondence after the loss of the consignment where both shipper and consignee immediately act upon the understanding that it was the shipper's loss and that the carrier was the shipper's agent. The object in a court of equity is moreover to discover the true owner of

these goods and not the technical owner, and where the parties in interest agree as to ownership of goods, the carrier is amply protected in any payment he may make.

My conclusion is that intervenors have properly brought suit.

65 *Custom as to Barley.*

It is contended by counsel for defendant that the liability of the receiver cannot be greater than that of warehouseman. This contention is not raised in the answer to the original petition, but may be considered as raised by the answer to the amended petitions. It is, of course, entirely inconsistent with the defense that the car had been delivered to the Terminal Railroad Association, for if they held them as warehousemen, then they had not delivered them. Still, however, admitting the question is subject to discussion, the burden of proof, is in such case most certainly cast upon the carrier; its liability as an insurer continued until the cars had reached their destination and been unloaded or placed in a safe warehouse, or place for unloading.

Porter v. Chicago & R. I. R. R., 20 Ill., 407.
C. & N. W. R. R. Co. v. Bensley, 69 Ill., 630.

The destination of the cars was St. Louis, Missouri (see stipulation),

Wabash R. R. v. Jaggerman, 115 Ill., 407,

and it is very uncertain whether consignee, under the circumstances, even if notice to him had been given, could prejudice the rights of the owner by any change of destination. I am of the opinion that either the receiver or the Terminal railroad held the barley as a common carrier. Having reached that conclusion, it is unnecessary to discuss the degree of care exercised.

Do the limitations in the bills of lading or shipping receipts enaure to the benefit of connecting carrier?

Certainly not in this case. In the case cited by counsel for defendant, *R. R. Co. v. Mfg. Co.*, 16 Wallace, 318, and which was delivered in a State where no laws had been passed as to limitations of liability the court says: "It is not only against the policy of the law, but a serious injury to commerce to allow the carrier to say that the shipper of merchandise assents to the term proposed in a notice, whether it be general to the public or special to a particular person, merely because he does not expressly dissent from them." But by the laws of Iowa, the shipping point, and by the laws of Illinois, the place of loss, common carriers are prohibited from limiting their common-law liability in any receipt.

Further, it developed from the evidence that the bills of lading as shown, were given subsequent to the destruction of property and simply as evidence of shipment.

"After the goods are shipped, it is too late to impose upon the shipper a cause exempting the carrier from liability from loss by fire, after such fire has occurred."

Lamb v. Camden & A. R. Co., 4 Daly, 483.

66 I am therefore forced to the conclusion that the owners of this barley have a just claim for its value from one of the common carriers who have transported it, or agreed to transport it.

The evidence is conclusive that the barley was safely carried by C., M. & St. P. to Rock Island and from there carried by the Rock Island & Peoria, to Peoria, Illinois; where it was delivered to the C., P. & St. L. and by it transported to East St. Louis.

The sole question then remains was it delivered by the C., P. & St. L. to the Terminal Railroad Association, for further carriage.

What is the evidence as to

Delivery.

The barley in question was carried by the C., P. & St. L. to the end of its track proper. There is no connection between that point and the Eads bridge or Wiggins ferry leading to St. Louis, Missouri. The old C., P. & St. L. R. R. having no terminal facilities in East St. Louis for the forwarding of freight prior to the receivership, made an agreement with the Terminal Railroad Association of St. Louis, to furnish the needed facilities. This agreement was made June 1, 1891, and as never formally re-enacted by the receiver, but his testimony shows that he ratified its and was and is now doing business under it. It provided for the handling of C., P. & St. L. trains, cars of its engines and cars, and the handling and care of freight at the rate of fifty cents for each loaded car and regular freight charges. By it, the Terminal railroad agreed to furnish the necessary yard room, or track facilities, switch-engines, and yardmen in making up and breaking up all freight trains, &c. The course of business under this agreement was for the C., P. & St. L. to carry its freight to the end of its own tracks proper, and then upon certain Y tracks which belonged to the Terminal railroad; here the engine of the C., P. & St. L. to carry its was cut off, and the Terminal engines broke up and the train deposited its cars upon certain tracks in the Terminal yards. These tracks of deposit were not exclusively used by the C., P. & St. L., but the cars seem to have been always placed upon them. A wooden warehouse through which these tracks ran or was near to was not used at the time of the fire by the C., P. & St. L. railway, but was used by a commission company for the storage of bailed hay. This warehouse was, as the evidence shows, a dangerous fire-trap.

From the statement of Calvert, the agent of the C., P. & St. L. at East St. Louis, it appears that the cars containing this barley came to the Y tracks on the following dates:

4126 on October 25, 1894.
2598 on October 25, 1894.
12336 on October 26, 1894.
3728 on October 26, 1894.
18126 on October 26, 1894.
10720 on October 26, 1894.
6842 on October 26, 1894.
4268 on October 26, 1894.
7552 on October 26, 1894.
37506 on October 26, 1894.

67 Two arrived there on the third day before the fire, nine on the second day, and one on the night before.

On the night of Sunday, October 28th, the fire broke out in the wooden warehouse about 11 p. m., and consumed it, together with the cars in controversy, and many others. The origin of the fire does not appear from the evidence, but it is supposed to have resulted from sparks of a passing engine communicated to the hay in the warehouse and fanned by a high wind. Evidence admitted under objection showed that the Terminal railroad attempted to save its own cars first, and would not allow agents of the C., P. & St. L. to direct the movement of engines. The evidence as to course of business further showed that when cars were set on these deposit tracks, they remained there until a waybill was prepared by the agents of the C., P. & St. L., directing their transfer or forwarding to some other point. When this waybill was presented to the Terminal railroad, its engines again took hold of the cars designated, and placed them wherever the waybill ordered. When this waybill was presented to the Terminal railroad, then, and not until then, the car accountant of the C., P. & St. L. made out a junction report. Junction reports in was shown were a general custom of railroads, and were simply a postal card sent to and informing the railroad, which had originated a car of freight, that a car, designated by a certain number, had been delivered to a connecting carrier by the railroad sending the card. Their purpose, of course, being to keep track of cars.

The evidence in this case shows that no waybill for these cars was given to the Terminal R. R., nor was any junction report sent to the C., M. & St. P.

The evidence further shows that no notice was sent to the owner, shipper or consignee of the arrival of said cars at St. Louis, or of the delivery of them to the Terminal railroad.

The evidence also shows that Calvert, the local agent of the C., P. & St. L. made a claim against the insurance company for the value of these cars and contents, stating that the fire occurred on October 28, 1894, and consumed this freight in transit. Also, that salvage operations were carried on by the C., P. & St. L., and the result paid to the shipper. Also, that the cars damaged and not entirely destroyed by said fire, were repaired at the cost of the C., P. & St. L. railroad and returned to their owners. The evidence, however, also shows that the receiver ordered insurance claims to be filed because of the time limit imposed by the insurance policies, and that he made salvage and repaired cars after demand upon the Terminal R. R. to the same, and with the understanding that his action should not prejudice any claim he might have against the Terminal Association.

Whatever bearing these admissions may have with relation to the shippers I have not considered.

68 *Conclusions.*

It may be assumed that the rule in America is that the obligation of a common carrier of goods is to carry them over its own line and safely deliver to the connecting carrier, and, if there is a necessity for storage, it is considered a mere accessory to transportation.

R. R. v. Mfg. Co., 16 Wallace, 318.

The burden of proof is upon the carrier to show that at the time of loss, without negligence on his part, his liability as insurer had terminated.

P. & P. N. v. C., R. I. & P., 109 Ill., 135.
R. R. v. Mfg. Co., 16 Wall., 318.
Schulter v. Adams Exp. Co., 5 Mo., 316.

The question to be determined is whether anything remains to be done by the carrier in completion of its contract to safely carry and deliver.

Gregg v. Ill. Cent., 147, 556.

"It is very clear that the simple deposit of the goods by the carrier in his depot, unaccompanied by any act indicating the intention to renounce the obligation of a carrier will not change or modify even his liability."

R. R. v. Mfg. Co., 16 Wall., 318.

Notice must be given consignee.

Carrier who receives goods for further transportation continues liable as carrier until they are received by another carrier, or until he in some way distinctly renounces responsibility.

Conkey v. M. & St. P. R. R. Co., 31 Wis., 619.

Judging this case by the above rules, did anything remain to be done by the C., P. & St. L.?

Was the intention to renounce its obligations indicated by any act?

Was notice given to consignee?

Did C., P. & St. L. distinctly renounce its responsibility?

Were the goods left in the sole control of the Terminal railroad?

Under the evidence these questions must be answered adversely to the receiver.

The tracks set apart for the use of the receiver were, as far as this controversy goes, his own. They were his by the agreement of leasing. They were not a destination point. It was not intended nor was it feasible to unload there. After the cars reached that point, they could not be controlled nor taken away by the Terminal railroad, which was simply one of the instruments used by receiver in his carriage of freight. It was only by the further act of the receiver or his agents that the cars could be moved at all. It
69 was not in the power of the Terminal railroad under the lease to change his order of things, whereas the receiver

might at any moment have terminated his responsibility by issuing a waybill, directing the further carriage of the cars to their proper destination.

The supreme court of Illinois have, it is true, in Smyser case, 38th Illinois, said that the mere signing of a bill of lading alone does not transfer freight, but that is evidence of transfer; they were speaking of the original shipment, and of the initial carrier. In such a case, the acceptance of freight of course controls. So in the case at bar—no bill of lading was issued by the C., M. & St. P., but they accepted the freight and became a carrier by their own act. The Terminal railroad did not however accept this freight at East St. Louis. They had no opportunity to do so.

So in *Pratt v. Grand Trunk*, 5 Otto, 43.

Where there was a joint possession and a definite place for deposit of goods destined for transportation, the court properly says, that the goods were under the control of the agents of the R. R. Co.; that they were deposited and received for transportation; that no further orders were expected.

So also in *Merriman v. Hartford R'y Co.*, 24 Conn., 354, it was held that if a common carrier agree that property may be deposited in a certain place without notice to him, such deposit alone is sufficient delivery, and such agreement may be shown by a constant practice and usage.

But in the case at bar, the facts were the direct converse of these above-recited cases. The usage and custom was shown to require a waybill or special notice.

This case likens itself to the case of *Mt. Vernon Car Co. v. Alabama G. S. R. Co.*, 92 Ala., 296.

I quote from Ray on Freight Carriers:

"The placing of a car by an initial carrier on the side track of the connecting carrier, without giving the latter any notice, and without marking it with the name and address of the consignee, or sending any waybill or shipping directions does not establish the relation of contractors between the initial and the connecting carrier."

The reason of such a rule is apparent on a moment's reflection. What order or system could be maintained if the hundreds of cars that pour into such a terminal point were without direction? It is also significant in this connection that the junction reports, that the evidence shows were made when a transfer took place, were not made for these cars.

I reach the opinion that the intervenors have a just claim against the receivers in the sum of $3,169.24, and interest at 5 % from loss, and that it should be paid as the court may order.

All of which is respectfully reported this 7th day of April, 1896.

STUART BROWN, *M. C.*

70 Afterwards, to wit, on the 27th day of April, in the term and year last aforesaid, came again the receiver and filed in the clerk's office of said court his exceptions to the report of the master, which exceptions are as follows, to wit:

Exceptions of Receiver.

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Exceptions of the Receiver to the Master's Report.

Now comes C. H. Bosworth, receiver herein, and excepts to the report of Stuart Brown, master in chancery, filed in the above-entitled matter on the 10th day of April, 1896, and for cause of exceptions shows:

First. For that the said master has, by reference to his report made on the intervening petition of T. McMichael & Son, filed in the above-entitled consolidated cause on the 8th day of April, 1896, reported that the destination of the cars containing said barley was St. Louis, Missouri; whereas, the said master should have reported that the destination of said cars and their contents was East St. Louis, Illinois.

Second. For that the said master as, by reference to his report, on the intervening petition of T. McMichael & Son above referred to, reported that either the receiver or the Terminal railroad held the barley in question as a common carrier; whereas said master should have reported that the barley in question, at the time of its damage and destruction, was in the custody and under the complete control and management of the Terminal Railroad Association of St. Louis as a warehouseman.

Third. For that the said master has, by reference to his report, on the intervening petition of T. McMichael & Son above referred to, reported that the limitations in the bills of lading or shipping receipts do not enure to the benefit of connecting carriers; whereas said master should have reported that the bills of lading or shipping receipts, under and by virtue of which said barley was transported, constitute specific contracts, containing a clause exempting the carriers from liability from loss by fire, and that the benefit
71 of said contract enured to each of the connecting carriers, including the receiver.

Fourth. For that the said master has failed and refused to report that the barley in question, at the time of its damage and destruction, had been delivered by the receiver to the Terminal Railroad Association of St. Louis, in the due course of business, and was then in the custody and under the complete control and management of said Terminal Railroad Association of St. Louis.

Fifth. For that the said master has reported that the intervenor has a just claim against the receiver in the sum of $1,144.07, with

interest thereon at the rate of five per cent. per annum, from date of loss to the 7th day of April, 1896, and that the same should be paid as the court may order; whereas said master should have reported that said intervenor was not entitled to recover from the receiver for the loss and damage occurring to said barley, by reason of said fire, and that said intervening petition should be dismissed at intervenor's cost.

Sixth. For that the said master has failed and refused to report that it appears from the evidence, that the consignee of said intervenor had entered into a contract with the Terminal Railroad Association of St. Louis, by virtue of which the latter was holding said barley, at the time of its loss and damage as a warehouseman, awaiting further orders as to reshipment from said consignee, and for the convenience of said consignee, as the agent of said intervenor.

Seventh. For that the said master has failed and refused to report that it appears from the evidence that the consignee of said intervenor was acting as his agent; and that said intervenor had full knowledge of the manner in which said barley was being handled at East St. Louis, through his agent, said consignee, and acquiesced therein.

Eighth. For that the said master has failed and refused to report that it appears from the evidence that it was the custom of the consignee of said intervenor to have the grain, which intervenor shipped to them, held in the yards of the Terminal Railroad Association at East St. Louis, to await further orders as to reshipment, and that said further orders of reshipment were dependent upon the state of the market, and the sales made by said consignees; and that said barley, at the time of its loss and damage, was being held in the yards of the Terminal Railroad Association at East St. Louis, awaiting further orders of reshipment, and at the convenience of said intervenor, through his agent, the said consignee.

Ninth. For that the said master has failed and refused to report that the obligation of the receiver, as a common carrier, was to transport said barley to East St. Louis only, and there put it
72 on the tracks of the Terminal Railroad Association of St. Louis in the usual place of deposit, where, the evidence shows, it was the custom acquiesced in by the intervenors, through their agents, the consignees, to allow the same to remain until said consignees should desire to reship it, whereupon, according to the said custom, a separate contract of carriage would be entered into with, and a new bill of lading issued to said consignee.

Tenth. For that the said master has found and reported that the said receiver was liable to the intervenor, as a common carrier; whereas, the said master should have found and reported that the said receiver, as a common carrier, had in all respects complied with his contract of carriage by safely transporting and delivering the grain to East St. Louis, and there depositing it in the customary and usual place for delivery, on tracks designated for that purpose, in the yards of the Terminal Railroad Association of St. Louis, and for that reason was fully discharged from all liability in respect to the loss of said grain by fire.

Eleventh. For that the said master has found and reported that said receiver, as a common carrier, was liable to intervenor for the loss of said grain; whereas, he should have found and reported that the said fire occurred after the said receiver had faithfully delivered the said goods at their point of destination, under the contract with said receiver; and that the said goods were thereafter lost by fire through the negligence of the Terminal Railroad Association of St. Louis, and not through any default or negligence of said receiver.

And thereupon this receiver prays that the said master's report be annulled and set aside, and that a decree may be entered on said intervening petition, dismissing the same at petitioner's cost.

C. H. BOSWORTH, *Receiver*,
By BLUFORD WILSON AND
P. B. WARREN,
His Solicitors.

(Indorsed:) Filed April 27, 1896. James T. Jones, clerk.

Afterwards, to wit: on the 3d day of March, in the January term of said court, in the year of our Lord one thousand eight hundred and ninety-seven, the following further proceedings were had in said cause and entered of record, to wit:

73 *Order, March* 3, 1897.

United States Circuit Court, Southern District of Illinois, January Term, 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS R. R. Co.

Interventions of—
Chicago, Milwaukee & St. Paul Railway Company;
W. W. Cargill Company;
T. McMichael & Son;
S. Y. Hyde Elevator Company;
Huntting Elevator Company;
Jacob Rau;
Gilchrist & Company;
Henry Rippe;
Carr, Ryder & Engler Company.

It is ordered by the court that the exceptions filed in the foregoing interventions, respectively, by the defendant, receiver of the Chicago, Peoria & St. Louis Railroad Company, to the reports of the master, be and the same are severally overruled and the reports respectively approved.

Afterwards, to wit: on the 5th day of April, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Decree, April 5, 1897.

In the Circuit Court of the United States for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company *et al.*, Defendants.
} In Equity. Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

And now on the 5th day of April, A. D. 1897, came again the said intervenor, Jacob Rau, by Burton Hanson and George P. Cary, its counsel, and the said Mercantile Trust Company of New York by Bluford Wilson, its counsel, and also C. H. Bosworth, receiver herein, by Bluford Wilson and P. B. Warren, his counsel, and this cause coming on to be further heard upon the exceptions of the said C. H. Bosworth, receiver, to the report of the master in chancery herein, and the court having heard argument of counsel, and being sufficiently advised, doth order and adjudge and decree that said exceptions be, and they are hereby overruled, and the report of said master is in all things confirmed.

74 It is further ordered, adjudged and decreed by the court that said C. H. Bosworth, receiver, pay as a part of the expenses of his receivership, within ninety days from the entry of this decree, the said sum found to be due to said intervenor, Jacob Rau, to wit, the sum of one thousand four hundred and forty-four dollars and seven cents ($1,444.07), with interest thereon at the rate of five per cent. (5%) per annum from the 10th day of April, 1896, the date of the filing of the master's report, to the entry of this decree, making a total of principal and interest the sum of fifteen hundred and sixteen dollars and seven cents, and costs, exclusive of clerk's fee, amounting to sixteen dollars and — cents, making a total of principal, interest and costs of fifteen hundred and thirty-two dollars and seven cents ($1,532.07).

It is further ordered, adjudged and decreed that inasmuch as the aforesaid amount is properly chargeable to the expenses of the receivership of C. H. Bosworth herein, this decree for the payment of said amount to said intervenor, Jacob Rau, be and the same is hereby adjudged to be a lien upon all the property and income of said defendant, Chicago, Peoria & St. Louis Company, as it existed and was known during said receivership, in favor of the intervenor, Jacob Rau, and upon all of the property and income of the purchaser or purchasers, purchased at the foreclosure sale heretofore had, their successors or assigns.

It is further ordered, adjudged and decreed that said lien be and the same is hereby adjudged to be a lien upon all the property and income of said defendant, Chicago, Peoria & St. Louis Railway Company, its said purchaser or purchasers, their successors or assigns,

prior and superior to the lien of the mortgage given by said defendant railway company to the Mercantile Trust Company of New York, and to any and all mortgages that may have been placed upon said property by said defendant, or said purchaser or purchasers, their successors or assigns, or which may hereafter be placed upon said property.

And the court having in the original decree and confirmation of sale thereunder specially reserved the right of caption of the property of said Chicago, Peoria & St. Louis Railway Company to enforce the payment of the sum or sums that might be decreed to be liens on said property, it is further ordered, adjudged and decreed that if said amount herein adjudged and decreed to be paid to said intervenor, Jacob Rau, is not paid within the time herein limited, the said C. H. Bosworth, as receiver, is hereby directed to take possession of all of said railroad property, together with its income, rolling stock and real estate, and operate the same, and out of the net earnings pay the amount due on this decree to Jacob Rau.

75 And afterwards, to wit: on the first day of June, in the year last aforesaid, a certificate of evidence in the matter of said intervening petition of Jacob Rau was filed in the office of the clerk of said court, as follows:

Certificate of Evidence, Aug. 27, 1895.

In the Circuit Court of the United States for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.*	In Chancery. Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

I, William J. Allen, judge of the said court, by and before whom the said cause was heard, do hereby certify that the following depositions, exhibits, statements and agreements were read in evidence therein, by the several parties thereto upon the hearing thereof, that is to say: On behalf of the intervenors, the following:

On Tuesday, August 27th, 1895, before Stuart Brown, master in chancery of the United States court for the southern district of Illinois, in the case of The Mercantile Trust Company and others against The Chicago, Peoria and St. Louis Railway and others, a consolidated cause pending in said court, and in the matter of the interventions in said cause by the Chicago, Milwaukee and St. Paul Railway Company, W. W. Cargill and Company, T. McMichael and Son, S. Y. Hyde Elevator Company, Huntting Elevator Company, Jacob Rau, Gilchrist and Company, Henry Rippe, Carr, Rider and

Engler Company, the following testimony was taken on behalf of said petitioner, by consent signatures of witnesses being waived; the petitioners being represented by George P. Cary and Burton Hanson and defendants by Bluford Wilson and P. B. Warren; V. Hickox acting as stenographer.

Testimony of F. X. Roederer.

F. X. ROEDERER sworn:

Direct by Mr. BURTON HANSON:

Q. Where do you reside?
A. St. Louis.
Q. What is your business?
A. Freight agent for the Terminal Railroad Association of St. Louis.
Q. How long have you been in that position?
A. Something over three years.
Q. The Terminal Railroad Association of St. Louis and
76 the Chicago, Peoria and St. Louis Railway Company have an agreement in reference to the use of certain tracks of the Terminal Association at East St. Louis, have they not?
A. Yes, sir.

It is stipulated that a copy of this paper may be used instead of the original.

Mr. WARREN: If it is a copy. The master can compare it.
Q. I have compared it.
Mr. WARREN: All right.
(Paper offered and marked Exhibit "A.")

Q. Has the Chicago, Peoria and St. Louis railway any terminal facilities at East St. Louis?
A. I am not familiar, but they have a freight-house there on what is known as the island.
Q. For cars that the Chicago, Peoria and St. Louis bring into East St. Louis, consigned to St. Louis, has it any terminal facilities of its own for the handling of the cars?
A. Well, they have no terminals in St. Louis that I am aware of.
Q. East St. Louis?
A. Would be sent to East St. Louis and then be sent over.
Q. My question is whether they have any terminals in East St. Louis for those cars consigned to St. Louis.
A. Not I am aware of, of their own.
Q. Was it not for that reason this arrangement was made provided for in this contract?
A. Yes, sir.
Q. Have you a map of the tracks of the Terminal Railroad Association at East St. Louis?
A. East St. Louis yard; yes, sir.
Q. I will show you this blue print which is designated as a map of a part of East St. Louis between the Relay depot and the stock

yards, dated November 3, 1890, and ask you if that correctly represents that part of the Terminal at East St. Louis.

A. Yes, sir; that represents the yard of the Terminal Railroad Association at East St. Louis, and also shows the portion operated by the C., P. & St. L.

Q. On this map are certain red lines; what are those red lines?

A. Tracks in the yard set apart for the C., P. & St. L. railway, two of them going through the building.

Q. These that are marked red, are those the tracks set apart and commonly used by the receiver of the C., P. & St. L., under this agreement introduced in evidence, and dated August 1, '92?

(Objection.—Let the contract show for itself.)

77 A. Yes, sir; provides certain facilities, and those tracks in red were used for that purpose.

Q. Used by the receiver in this proceeding?

A. Yes, sir.

Q. I will ask you if these tracks marked on this map, or blue print, in red are the tracks set apart and commonly used by the receiver in handling trains under this agreement?

(Objection, for the reason stated.)

A. Yes, sir.

Q. There was a fire in this yard on the evening of the 28th of October, 1894; where was that fire with reference to these tracks marked red?

A. It was a building about the center of those tracks, commonly called the jack yard—building known as transfer station.

Q. Marked on the blue print, Terminal Association freight transfer; platform and platform; those the buildings?

A. Yes, sir.

Q. Are you familiar with the custom which prevailed during the business of the receiver under this contract?

A. I am not stationed there, and I could not say that I have actually seen it done, yet, under my instructions, which I assume are carried out, I may speak of it; and I know from personal knowledge of there having been frequently cars on those tracks in what we called the jack yard.

Cross-examination by Mr. BLUFORD WILSON:

Q. Do you mean to say that the tracks referred to in your testimony, as set apart and designated for the use of the receiver of the Chicago, Peoria and St. Louis railway were exclusively used by him?

A. Yes, sir; they were set apart for their use, and so far as I know were exclusively used by that road.

Q. Do you know?

A. I couldn't say that from personal knowledge.

Q. For all you know, these tracks referred to were used in common both by the Terminal Association and the receiver?

A. Well, so far as I know, such might be the case; I couldn't say directly no or yes.

Q. Do you know that the cars referred to in your examination-in-chief were the cars of the receiver of the C., P. & St. L.?

A. I said I had seen cars on the tracks. Going through I have seen the tracks used—seen C., P. & St. L. cars. That is, cars belonging to the C., P. & St. L. road, and foreign cars that came in on their line.

78 Q. I will ask you if a few of the tracks designated went through the freight building?

A. Yes, sir; I so stated.

Q. By what company and by whose cars were those tracks occupied?

A. Well, those tracks were used by the receiver, and also at that time by a party transferring hay.

Q. Who was the party?

A. The Gratiot Freight Warehouse Company, I think.

Q. I will ask you if it is not a fact that at the time referred to, the freight-house itself and store was leased to the Gratiot Company, and used by them in fact, and stored with a large quantity of hay?

A. I could not say it was leased; don't think it was; but at the time of the fire they were transferring hay.

Q. Do you know who the hay belonged to?

A. I assume it was on account of the parties doing the transfer.

Q. The Gratiot Company?

A. Yes, sir.

Q. I will ask you if it is not a fact that these tracks—there were two of them, I believe—the two tracks that ran into this house were in common and daily use by the Terminal Association or their lessees?

A. What do you mean by lessees?

Q. Not the C., P. & St. L.

A. I couldn't say that there was any other lessee, or that it was used by any other.

Q. Haven't you said the Gratiot Company used those tracks?

A. Yes, sir.

Q. Who did they get authority from?

A. The Terminal Railroad Association.

Q. Your attention has been called to the map offered in evidence by opposing counsel?

A. Yes, sir.

Q. I will ask you if these two tracks running into this house are not two of the tracks indicated on the map as being exclusively used by the receiver of the C., P. & St. L.?

A. Yes, sir.

Redirect by Mr. HANSON:

Q. While these tracks marked red, and as you say set apart for the receiver, may have been used by others, isn't it true the receiver has all the use he may have need of of those tracks?

A. So far as I know; not being stationed there, I could not answer positively.

79 Q. But isn't it understood between the two companies in the actual daily practice, that these are the tracks the receiver is to occupy with his cars?

A. That is my understanding.

Q. I now offer this blue print in evidence, marked Exhibit "B."

Cross-examination by Mr. WILSON:

Q. Do you mean to be understood as swearing that the tracks indicated on your map or on the blue print were the only tracks that were used by the receivers of the C., P. & St. L. in your yard at East St. Louis?

A. So far as his business is concerned, yes, sir; so far as my knowledge goes.

Q. Under whose direction were the cars placed on the tracks at East St. Louis?

A. On those tracks designated?

Q. Any tracks in your yards?

A. That would depend on the business. Take the receiver's business; train would be placed under his direction there, but after they were turned over to the Terminal Association they might be placed on any of those tracks.

Q. Do you mean to say that the receiver had any control whatever of these tracks for the purpose of designating particularly on which any particular car should be shoved?

A. I couldn't say, but when any of his trains came in they were placed on his track.

Q. Suppose those tracks, as you have stated, had been filled with the hay cars of the Gratiot Company, what would you have done with the cars of the receiver?

A. Don't think that is a possible case; that could not be.

Q. Haven't you just testified that those two tracks running through the freight building were occupied by the Gratiot Company?

Mr. HANSON: He stated the depot was.

Q. Tracks, too?

A. I stated that two of the tracks set apart to the receiver ran through the building, and so far as they ran through the building there was hay loaded and unloaded on those tracks.

Q. Know of any other companies besides the Gratiot Company using those tracks?

A. No, sir.

Q. State definitely whether it is or not a fact that the tracks indicated on the blue print were in common use by the C., P. & St. L. and other patrons of the Terminal Association, and that such

80 use was under the immediate direction of the yardmaster of the Terminal Association.

A. So far as I know they were not.

Redirect by Mr. HANSON:

Q. If they were under the direction of the yardmaster, had the yardmaster set apart these tracks to be used by the receiver?

(Objection.—Says he doesn't know.)

A. I don't know so far as the yardmaster is concerned, not being stationed there myself, how he did his work. I merely directed how the work should be done.

Q. What were the directions to the yardmaster with respect to the tracks the receiver should have the use of under this agreement?

A. General instructions under the contract; certain facilities furnished the C., P. & St. L.

Q. What were they?

A. Certain tracks designated in red; from forty to fifty, I think.

Cross-examination by Mr. WILSON:

Q. Are you able to state who designated the *facts* (tracks)?

A. No, sir; I couldn't state that.

Q. Do you mean to say by any of your testimony that the receiver of the C., P. & St. L., or the railway company itself was even consulted, or had any voice in the selection of the tracks in question?

A. Well, I couldn't state from knowledge; that portion of the yard was set apart before I went to the company, so far as I know.

Q. Then you don't know?

A. No, I couldn't answer.

Redirect by Mr. HANSON:

Q. Do you know what the receiver has done with reference to those directions since you have been there?

A. My conclusion is——

(Objection.—His conclusion is not evidence.)

81 *Testimony of George H. Phelps.*

GEORGE H. PHELPS, sworn.

Direct by Mr. HANSON:

Q. Where do you reside?

A. St. Louis.

Q. What is your business?

A. Local agent of the East St. Louis Terminal Association.

Q. How long have you been so?

A. Two and a half years.

Q. Are you familiar with the method in which the receiver of the C., P., S. P. & St. L. transacts the business of the road at St. Louis?

A. As far as we are concerned, yes, sir.

Q. Has the C., P. & St. L. *L.* or the receiver any terminal facilities at St. Louis?

A. No, sir; not outside of two or three tracks at their freight station on the river front.

Q. What tracks are used by the receiver of the C., P. & St. L. and have been used for the last year, of the tracks belonging to the Railroad Terminal Association?

A. Tracks shown in red on the blue print.

Q. Those are the tracks the receiver has used?

A. Yes, sir.

Q. And those tracks belong to the Railroad Terminal Association?

A. Yes, sir.

Q. Know whether those tracks have been used under any agreement?

A. Yes, sir; under an agreement to do the terminal work of the C., P. & St. L.

Q. Now when a train of the receiver comes into this yard from the north, where will it come to a stop, with reference to any track on this map?

(Objection.—Unless he testifies with some degree of care, with reference to the map it will not be understood by the master of the court.)

Q. I will designate the track.

A. Tracks known as "Y's;" three "Y" tracks; their freight trains come in there and stop.

Q. Those "Y" tracks are the tracks which appear on this map as connecting and are marked as Terminal Association range yard—to the Wabash junction—they are just north——

A. North and west of the portion of the yard assigned to the C., P. & St. L.

82 Q. North and west of the tracks marked in red?

A. Yes, sir.

Q. The train comes in on this "Y;" what is then done with it by the receiver, if anything?

A. The train stops on the "Y," and the receiver is done with them.

Q. These "Y" tracks belong to the Terminal Railroad Association?

A. Yes, sir.

Q. What is then done with this train?

A. The train is broken up and put on the tracks assigned to the C., P. & St. L.

Q. What are those tracks in reference to any outline on the map?

A. Outlined in red.

Q. What company breaks up this train and places the cars on the tracks marked red?

A. The Terminal Railroad Association.

Q. That done under the agreement introduced here?

A. Yes, sir; at a certain sum per car.

Q. What sum?

A. Fifty cents a car.

Q. When that train is broken up, as you have stated, and the cars set on the tracks marked red, what is then done with these cars?

A. We are done with the cars then, until we get waybills from the agent of the C., P. & St. L.

Q. From the receiver?

A. Yes, sir; from the agent of the receiver.

Q. When you get a waybill—what is a waybill?

A. A manifest showing what disposition is to be made of the freight.

Q. When you receive the waybill of a car what do you do then?

A. Card that car out, and our yardmen are instructed to switch it out and deliver it according to the instructions.

Q. Does this waybill contain the number of the car and destination?

A. Yes, sir; consignee, destination and route?

Q. When you receive this waybill and switch the car out, where do you take it?

A. Take the car out of their yard, their portion of the yard, and place it in the train in our portion of the yard, and take it to the connection or destination indicated.

Q. Is this the practice which has prevailed ever since the receiver has been operating there?

83 A. Ever since I have been there.

Q. And you have been there how long?

A. Two and a half years.

Q. There now?

A. Yes, sir.

Q. For the last two and a half years?

A. Yes, sir.

Q. You remember the fire at East St. Louis during the night of October 28, 1894?

A. Yes, sir.

Q. Where did that fire occur, in reference to these tracks?

A. Occurred in that building known as the transfer warehouse, in the transfer building, and was located between tracks forty and fifty.

Q. Is it the building through which these two tracks marked red extend?

A. Yes, sir.

Q. I will call your attention to the cars mentioned in the intervening petitions filed herein by the Chicago, Milwaukee & St. Paul Railroad Company, W. W. Cargill & Company, T. McMichael & Son, S. Y. Hyde Elevator Company, Huntting Elevator Company, Jacob Rau, Gilchrist & Company, Henry Rippe, Carr, Ryder & Engler Company, and ask you if the cars mentioned and described in those petitions were at the time of the fire on the tracks marked red on this blue print?

A. Yes, sir.

Q. Now you have a list of these cars; will you designate on which track these various cars were standing at the time of the fire, as near as you can?

A. I can give you the track each car stood on; they stood on the

tracks from forty to fifty, and I can give you the individual car numbers and the tracks they were on.

Q. Chicago, Milwaukee & St. Paul cars, number thirty-t-o eighteen?

A. That was on track 42.

Q. Same company, car thirty-five twenty-four?

A. Track 45.

Q. Same company, forty-one twenty-six?

A. Track 40.

Q. Same company, sixty-three sixty-four?

A. Track 41.

Q. Same company, thirty-seven twenty-eight?

A. Track 43.

Q. Same company, sixty-eight forty-two?

A. Track 43.

84 Q. Same company, eleven fifty-four?

A. Track 40.

Q. Same company, twelve thirty-two?

A. Track 44.

Q. Same company, thirty-seven five naught six?

A. Track 43.

Q. Same company, eleven hundred?

A. Track 42.

Q. The same, twenty-four thirty?

A. Track 44.

Q. The same, twenty-five ninety-eight?

A. Track 41.

Q. The same, six eighty?

A. Track 40.

Q. The same, twelve?

A. Track 42.

Q. The same, ten five thirty-six?

A. Track 42.

Q. The same, ten seven twenty?

A. Track 43.

Q The same, 10071?

A. Track 43.

Q. The same, eleven eight thirty-six?

A. Track 41.

Q. The same, twelve eight eighty-six?

A. Track 41.

Q. The same, fifteen nine forty-four?

A. Track 41.

Q. The same, sixteen five naught two?

A. Track 40.

Q. The same, seventeen two seventy-two?

A. Track 40.

Q. The same, eighteen one twenty-six?

A. Track 43.

Q. The same, twenty naught twenty-two?

A. Track 41.

Q. The same thirty-one naught nine eight?
A. Track 42.
Q. The same, thirty-one two naught four?
A. Track 42.
Q. The same, thirty-two one nine four?
A. Track 44.
Q. The same, thirty-two nine eight six?
A. Track 42.
Q. The same, thirty-three naught nine naught.
85 A. Track 41.
Q. The same, thirty-three one three four?
A. Track 40.
Q. The same, thirty four nine naught eight?
A. Track 44.
Q. The same, thirty-four five seven four?
A. Track 44.
Q. The same, thirty-eight one naught eight?
A. Track 43.
Q. The same, forty-three naught eight naught?
A. Track 43.
Q. The same, forty-three two twenty-two?
A. Track 41.
Q. Forty-six naught sixty-four, the same?
A. Track 41.
Q. The same, forty-six nine nine two?
A. Track 42.
Q. Rock Island and Peoria Company, car number a thousand and four?
A. I can't say what track that was on; that car arrived on train thirty-seven, and it was not set on these tracks till after our record was taken, so I am not able to say.
Q. Are you able to say it was on one of those red tracks?
A. Yes, sir.
Q. C., B. & Q. Company, car number ten eight fourteen?
A. On track 41.
Q. The same company, eleven nine sixty-two?
A. Track 41.
Q. The same, fourteen three eighty-five?
A. Track 41.
Q. The same, nineteen nineteen?
A. Track 41.
Q. St. Louis, Belleville & Southern Illinois Company, car numbered twenty nine seven five (20975)?
A. On track 41.
Q. Is each one of these tracks that you have given the number of, on which these cars were standing, some one of the tracks designated on this map as colored red?
A. Yes, sir.
Q. Tracks set apart and commonly used by the receiver for his cars.
A. Yes, sir.

Had any waybill or direction of any kind whatever been given by the receiver of the C., P. & St. L. to the Terminal Railroad Association of St. Louis, with respect to any one of these cars you have located, up to the time of the fire?

86 A. No, sir.

Q. What was the custom in respect to handling these cars set out on these tracks, after they had been set there, on the part of the Terminal Association?

A. We had nothing to do with them at all until we received waybills if they stood there till doomsday.

Q. What did those waybills indicate?

A. Indicated what distribution was to be made of the shipment, and we were governed accordingly, and sent the car as directed.

Q. Until you got those waybills, what did you do with these cars?

A. Did nothing; let them stand.

Q. Did you receive any waybills from the receiver during the day of the twenty-eighth of October, 1894?

A. Yes, sir.

Q. Where were those cars standing for which you received waybills that day?

A. On those tracks marked in red.

Q. Have you a list of the cars for which you received waybills on the twenty-eighth of October, 1894, cars standing on these tracks marked red?

A. Yes, sir.

Mr. WARREN: Cars in this controversy?

Q. No, sir.

(Objection.)—Then we object.

Q. The purpose is to show that on that day they did give shipping directions in respect to other cars standing on those tracks.

The MASTER: Only important as showing custom; let it go in.

Mr. WILSON: Subject to objection.

The MASTER: Of course.

Q. You may answer.

A. Yes, sir.

Q. State what cars you received waybills for on that day.

A. Car numbers?

Q. Yes, sir.

A. Ninety-six ninety-four, Iron Mountain; two ninety-six, J. S. E.; twenty one hundred C., M. & St. P.; forty two naught three C., P. & St. L.; eleven one eighteen L. & N.; fifty six seventy nine M. & O.; six seventy C. P.; ten two nine eight I. C.; two nine six J. S. E.; ninety six ninety four Iron Mountain—a case of duplication; seven ten C. P.; thirteen naught naught seven M. P.; seventy one forty two M. P.; eleven seventy seventy two I. N.; two naught four one M. P.; nineteen sixteen C. P.; twelve eighty seven C. P.; fourteen sixty five J. S. E.; one fifty one H. C. A. & N.; seventy three

87 sixty three S. F.; twenty seven sixty I. C.; thirty one eight seventy two C. M. & St. P.; forty two G. B. H.; sixteen five sixty two C. M. & St. P.

Q. For these cars you have just given the numbers of, you received waybills on the twenty-eighth of October, 1894?

A. Yes, sir.

Q. What did you do after receiving those waybills, with respect to those cars?

A. Cars carried out as usual to their proper connections or destinations.

Q. Following the directions of the waybills?

A. Yes, sir; in accordance with the instructions.

Q. Was this service rendered by the Terminal Association in breaking up the train of the receiver when it came in on the "M" and placing the cars on these tracks marked red, a separate and distinct service from the work you did after receiving the waybills?

(Objection.)—Leading.

The MASTER: Don't think it is objectionable.

A. It was a separate and distinct service.

Q. Explain how and why.

A. We received for this service, taking care of the cars for which we had waybills—a separate revenue.

Q. Separate from what?

A. From making and breaking up trains.

Q. When a train came in on the "Y" and the Terminal Association would break up the train and set the cars on tracks marked red, did you have any knowledge or did the association have any knowledge, where these cars would be assigned?

A. No, sir.

Q. When and how did you get that knowledge?

A. From the waybill received from the agent of the C., P. & St. L., or the receiver at East St. Louis.

Q. Do you know who took care of these cars which I read to you, after the fire?

A. The receiver of the C., P. & St. L.

Q. Who took care of the contents of those cars?

A. Agents of the receiver of the C., P. & St. L.

Q. What did the contents consist of?

A. Principally barley and hard coal, so far as I remember.

Q. Principally barley in the cars I have read of to you, was it not?

A. Yes, sir.

Q. Was that a total destruction of the barley in these cars?

A. There was some little salvage.

Q. Who took care of this barley not destroyed?

88 A. Agent of the receiver of the C., P. & St. L.

Q. In what way?

A. If my recollection is correct, they gathered it up and made some disposition of it, but I couldn't say what.

Q. Was there any transfer of any of the barley in any of those cars to other cars?

A. Cars partly burned, contents transferred to other cars.

Q. How was that done?

A. Cars placed empty on adjoining track and contents transferred from car to car.

Q. Who did the work of that transfer?

A. C., P. & St. L. receiver's agent.

Q. Who moved the cars?

A. The Terminal Railroad Association placed the cars for transfer opposite.

Q. At whose suggestion?

A. Request of the agent of the C., P. & St. L.

Q. Charge for the service?

A. We made a bill for it; I presume it is paid, I can't say; bill never returned to us, and the presumption is strong that it was paid.

Q. Take Rock Island and Peoria car number a thousand and four, loaded with sash, doors, and blinds; what was done with that after the fire?

A. The agent of the receiver of the C., P & St. L. offered us a waybill for the car, but we declined it.

Q. That was after the fire?

A. Yes, sir; the day following the fire; the car was then under their instructions placed for transfer opposite an empty car.

Q. Who placed it there?

A. The Terminal Association.

Q. At whose request?

A. Under the instructions of the agent of the receiver of the C., P. & St. L.

Q. That service paid for?

A. Made a bill and sent it into general office; presume it was paid.

Q. At this point, at and prior to the time of the fire, what was termed a junction point existed between the two companies. Were there—were junction reports made with respect to the exchange of cars?

A. Yes, sir; that is the custom between all connecting lines interchanging cars with other lines.

Q. Was this, then, what was termed a junction point?

A. Yes, sir; made junction reports of all cars delivered to connecting lines.

89 Q. Was there a yardmaster at this point, at this yard?

A. Terminal Railroad Association had one.

Q. Did the receivers have an agent at East St. Louis?

A. Yes, sir.

Q. Do you know what the practice is in reference to one railway company reporting to another company the delivery of cars by and to some other company when delivered at a junction point?

A. Yes, sir.

Q. You may state what the custom is in respect to the delivery of cars; for instance, a train of the receiver comes into East St. Louis with several cars of the C., M. & St. P. Company. What is done by the receiver in reporting those cars of the St. Paul Company when it makes delivery of them to the Terminal Railroad Association?

A. I can only answer on presumption.

(Objection.)

Q. I don't want you to answer unless you know.

A. I know nothing of the agent of the receiver's plan of doing business with regard to junction reports.

Q. Do you know there is a custom of making those reports?

A. Yes, sir.

Q. Didn't you make those reports yourself for the Terminal Railroad Association, when you delivered cars to other connections?

A. Yes, sir; made junction reports.

Q. Don't you know that custom prevails at all junction points between all companies?

A. Yes, sir.

Q. What is that custom with respect to the case I cited to you, assuming there was such a connection—a train of cars coming into East St. Louis over the receiver's line as I stated?

A. Based on my experience, I should say the custom would be, when they actually delivered the car to the Terminal Association by furnishing forward instructions, they would send a junction card to the car accountant of the C. & St. P.

Q. When would those junction reports be made with respect to the delivery of the waybill to you?

A. On the same day as the delivery of the waybill.

Q. Would those reports be made to the St. Paul road in case of that kind, if the cars were simply put on the tracks marked red and no waybill delivered to you?

A. Should not be made.

Q. You say not the custom?

A. Yes, sir; I should say so.

Q. Then what is the custom?

A. To report the delivery of those cars when they give the Terminal Association the billing.

90 Q. You mean the waybill?

A. Yes, sir.

Q. I hand you here a list of cars marked Exhibit of the C., M. & St. P. Railroad Company, containing numbers and dates when the cars arrived at East St. Louis and the dates at which they were delivered to the Terminal Railroad Association, and ask you if those numbers and dates of arrival and delivery are correct.

A. Yes, sir; this list was made up at our office under my personal supervision, and I would say the figures given there are correct.

Q. I wish to show that these cars would arrive on these red tracks, and were not delivered until some little time afterward, and the junction report which your agent made to our car accountant was on the same day and corresponded with the day of delivery of the waybill by your receiver to the Terminal Railroad Association.

Mr. WARREN: These cars in controversy?

A. Some of them may be.

(Objection.—Irrelevant and immaterial, as being cars not in controversy.)

Q. I will explain to the master that I offer this to show the custom

which prevailed at this place in respect to the business; for instance: Here were several cars which belonged to the St. Paul Company arriving at these tracks, marked red, at various dates, and they were afterwards delivered to the Terminal Railroad Association by the delivery of the waybill by the receiver to the Terminal Association, and on the very day that the waybill was delivered, that day the agent of the receiver reported the delivery of the car to the St. Paul Company, and until that report was made the St. Paul Company, of course, would charge the receiver with the possession of the car for all practical purposes. (To witness:) I will ask you whether, with respect to this exhibit, Is the date of billing correctly given there?

(Objection.—Same objection.)

A. Yes, sir.

(Paper offered and marked Exhibit "C.")

Cross-examination by Mr. WILSON:

Q. Does this memorandum, or exhibit, show for what purpose the car was delivered, whether for the purpose of being sent to some other point or destination?

A. No, sir; that exhibit simply shows the time the cars arrived at East St. Louis by the receiver's line and the time of the delivery of the cars; that is the time they gave us the waybill.

91 Q. Does that exhibit indicate in any way the destination of the cars?

A. No, sir.

Q. These various tracks marked in red which you have referred to by number, do not appear to be numbered on the blue print; are you able to state by number the two tracks that passed through the building designated on the blue print as the freight transfer of the Terminal Railroad Association?

A. Yes, sir.

Q. What were those numbers?

A. Tracks 42 and 43.

Q. Did you state in your examination-in-chief that these tracks were used exclusively by the receiver?

A. No, sir; the question was, commonly, and I answered yes.

Q. State whether they were or were not in the exclusive use of the receiver.

A. They were and were not; at times we stored a few cars there for our own purposes, but these tracks from forty to fifty offered more room that was allotted to the receiver. Under the agreement we gave them room for 150 cars and these tracks would hold over 200; while we stored some cars of our own, we did not intrude on their room.

Q. Then they were at the option of the use of the Terminal Association?

A. Only partially so.

Q. They were, then, partially so?

A. Yes, sir.

Q. Who was using the freight-house on October 28th?
A. The Gratiot Warehouse Association, transferring hay.
Q. Who gave them permission?
A. I couldn't say; came from the management, my immediate superior.
Q. Was your immediate superior an officer of the Terminal Association?
A. Yes, sir; the previous witness.
Q. What was the Gratiot Company using it for?
A. For the transfer of hay.
Q. Using the tracks in there too?
A. Only for the time it took to unload the hay and reload it.
Q. As much as that took, then the tracks were being used by the Gratiot Company, were they not?
A. Yes, sir.
Q. Were there any other cars on those tracks on October 28th, that did not belong either to the Chicago, Peoria and St. Louis, or the Gratiot Company?
92 A. Yes, sir.
Q. Whose cars, and by whose authority were they placed there?
A. There was on forty-two, none on forty-three.
Q. By whose authority?
A. By the authority of the yardmaster.
Q. Whose yardmaster?
A. Terminal Railroad Association's.
Q. How many of the cars were there?
A. Seven cars on track forty-two.
Q. Any of those cars burned?
A. No, sir.
Q. Any other cars except Chicago, Peoria and St. Louis cars on the night of the fire on the red track?
A. Yes, sir.
Q. How many others?
A. Well, I can't say exactly.
Q. Say approximately, as near as you can?
A. About twenty-five.
Q. How many of these cars were burned?
A. Two.
Q. How many cars for which the Terminal Association is, in your judgment responsible, were burned in the fire?

(Objection.—Not cross-examination, and not material to the issue.)

A. Thirteen cars.
Q. How many lost in the whole fire?
A. Eighty-three.
Q. I will ask you if it is not a fact that in taking cars out during the progress of the fire, you took out only such of the Chicago, Peoria and St. Louis cars as obstructed access to the other cars?

(Objection.—Immaterial and irrelevant, and not cross-examination.)

A. No.

Q. I will ask you if it is not a fact that in dealing with the fire you were careful to uncouple the Chicago, Peoria and St. Louis cars where they were attached and to take your cars out?

(Objection.—Incompetent, irrelevant and not cross-examination.)

A. I was not present at the fire, but looking over the ground on the following day, I considered that our men had slighted——

Q. Never mind. You say you were not there.

(Objection.—The witness knows what he saw afterwards. I shall insist on the right of the witness to explain.)

93 The MASTER: What he has actually seen he may state.

Q. Go ahead.

A. I was on the ground early in the morning, and I considered our men had slighted our own cars to save those of the J. S. E.; allowed eleven cars to be lost that could have been saved, for which the Terminal Association was responsible, in efforts to get cars away from the burning freight-house—those cars—and I feel sure they did everything to save the C., P. & St. L. cars.

Q. You base that on the fact that eighty-three cars were lost?

A. Understood that they made every effort to get C., P. & St. L. cars away.

Q. How many did they save?

A. I should say forty or fifty.

Q. Do you know of your own knowledge?

A. Forty or fifty that would have been burned up, had they not been drawn away from the building.

Q. Do you know whether that is true of your own knowledge?

A. From the location of the cars as they stood I am satisfied that is true.

Q. In designating these tracks in red on the blue print, and the cars standing upon them, do you do so on your own knowledge or from information derived from others?

A. From the records taken by our yard clerk.

Q. When were the records made up, before, or after the fire?

A. Both before and after the fire; that day and in the morning after the fire.

Q. You speak now about the salvage of certain property; I will ask you if you don't know and did not know, at the time you testified, that the receiver handled those cars and made whatever salvage was made under a specific agreement with the Terminal Association?

A. I know nothing of the agreement at all.

Q. Don't you know that in fact there was an agreement by which the receiver handled the wreck, with a distinct stipulation that it was to be without prejudice to either side?

A. No, sir; I was in a subordinate position and obeyed the instructions of my superior.

Q. All the answers which you made to Mr. Hanson's questions in examination-in-chief, in reference to salvage and so forth, were made strictly within your own knowledge, and not with any knowledge whatever of any agreement such as I have referred to?

A. Questions in reference to salvage?

Q. Yes, sir.

A. My own knowledge; no knowledge with reference to an agreement, whatever.

94 Q. Who handled and supervised the resistance that was made to the fire, and the attempts at salvage made on the night of October twenty-eight, 1894?

A. Gathering up the remains of the cars totally burned, done under the supervision of the agent of the C., P. & St. L., although we had a man with him.

Q. Who fought the fire—you didn't understand my question—who directed the fighting of the fire?

(Objection.)

The MASTER: I think a question as to the police about the yard is pertinent.

A. The question is rather difficult to answer; the person in charge of the yard at night was known as the night yardmaster, and I presume the superintendent of the fire department directed the crews. But in a case of excitement everybody took a hand at fighting.

Q. Can you name who the night yardmaster was, and in whose employ?

A. Named, Mark Shawhan; in the employ of the Terminal Association.

Q. Whose locomotives were used in making the transfers from the tracks nearest the fire?

A. Well, the Terminal engine was there—Merchants' Terminal engine—and I believe the Cairo Short Line engine was in the yard and assisted at the time, I was told.

Q. I am asking only for your own knowledge. At whose request did the Merchants' Terminal and the Cairo short line act?

A. I couldn't say; they were there at the time and making deliveries, and I presume it was only natural they should help all they could.

Q. Do you know as a matter of fact where the fire originated?

A. No, sir.

Redirect by Mr. HANSON:

Q. You were asked to give your conclusion as to how many cars were destroyed that the Terminal Association was responsible for, and you stated thirteen. Why did you state the Terminal Association were responsible for the thirteen?

A. Eleven cars standing on the tracks, nothing to do with the C., P. & St. L. business, moving from one connection to the other.

The others were cars in the C., P. & St. L. yard tracks, shown in red there, and one of them we had received a bill for and the other was a car our men, through an error, had left standing in the C., P. & St. L. tracks.

Q. This car left by error, was it a C., P. & St. L. car?

95 A. No, sir; a car moving from one line to another.

Q. And by error got onto their tracks?

A. Yes, sir.

Q. The other car you had received a bill for and had not removed.

A. Yes.

Q. The balance you were not responsible for—how many?

A. Balance of eighty-three.

Q. Why didn't you regard the Terminal Association as responsible for those?

A. Never received any instructions or bills for them and had no idea where they went to; consequently could not be moved.

Q. So as between the two companies doing the business there, the Terminal Association was not regarded as in the care and custody of the cars until waybills had been received from the receiver?

A. No, sir.

Cross-examination by Mr. WILSON:

Q. That the reason you didn't remove them?

A. I believe I stated we made all effort to remove them; the man managing the engine knew nothing about the cars we had bills for, and his idea was to get all the cars away from the fire as soon as possible.

Q. Certain of that?

A. Yes, sir.

Q. Although you were not there?

A. No, sir; but from what I saw after the fire.

Q. Know whether the Terminal Association paid for the eleven cars?

A. Of my own personal knowledge, I don't know.

Q. In the usual course of business, do you?

A. No way to ascertain except by making inquiries.

Q. Your attention ever been called to the fact whether you accepted the claim with reference to the eleven cars?

A. No, sir; I made my report on the loss of them.

Q. You consider you were responsible?

A. For those thirteen?

Q. Yes, sir.

A. For those, I considered the Terminal Association responsible.

Q. Stood on the red tracks?

A. No, sir; only two of them; they were in another portion of the yard.

96 Redirect by Mr. HANSON:

Q. The cars of the receiver commonly stood about this warehouse?

A. Yes, sir.
Q. The fire started in the warehouse?
A. Yes, sir.
Q. More of the cars of the receiver in and about there?
A. Cars of the C., P. & St. L. receiver were in and about there.

Cross-examination by Mr. WILSON:

Q. Explain the theory—the fire started in and about the warehouse?
A. Simply a theory; a presumption it started there, as the house was the place where it was discovered.
Q. What was stored there?
A. Hay.
Q. Anything else besides hay?
A. Not to my knowledge.

Adjourned to 2 o'clock p. m.

Mr. HANSON: I wish to introduce in evidence that petition ("D") which is the stipulation of August 27, 1895, and is marked Exhibit D.

Testimony of W. H. Calvert.

W. H. CALVERT sworn.

Direct by Mr. HANSON:

Q. Where do you live?
A. St. Louis.
Q. What is your business?
A. Agent of the receiver of the C., P. & St. L. at East St. Louis.
Q. Were you such agent prior to the fire, October 28, 1894?
A. I was.
Q. Some time prior?
A. Have been for the past three and a half years.
Q. At the time and prior to the fire did you have what is called a yard clerk at East St. Louis for the reciver?
A. I did.
Q. What were his duties?
A. They were numerous; one of his duties, to locate cars
97 coming to the C., P. & St. L.; in fact, locate any cars over which we have any jurisdiction or which will come to us.
Q. Who was your car accountant?
A. At East St. Louis station, do you mean?
Q. Yes, sir.
A. I have a clerk there; I have several of them.
Q. Who was car accountant for the receiver?
A. Mr. W. R. Bradley.
Q. Do you know what the custom is? Take a company like that of the receiver, what is the custom as to reporting cars at junction points when delivered to connecting lines—custom of the company?
A. Reports made by general car companies, do you mean?
Q. Yes, sir.

A. No, I don't. I presume make junction reports of the car connection.

Q. What is the junction report?

A. Simply a small card giving the date.

Q. That is, if the receiver delivered a car belonging to the C., M. & St. P. to the Terminal Association on the 28th of October, 1894, the receiver would then send one of these cards to the C., M. & St. P. when delivered?

A. Place that with some other company besides the C., P. & St. L.; situation so complicated I can't give an answer.

Q. Isn't it a very simple practice; one company notifying another?

A. It is true; but the question of delivery enters a great deal into the matter. I am not competent to answer that question.

Q. Don't be a lawyer; just take the word "delivery" as it is understood. I am asking what would be done by the receiver in a case of that kind, where there had been a delivery of a Chicago, Milwaukee & St. Paul car?

A. I can't say whether he would report the car on arrival at St. Louis, or how.

Q. If that was a delivery, or if it required something else to constitute a delivery, whenever there was a delivery, a report would be sent to the St. Paul Company, would it not?

A. I presume so.

Q. Now, from whom would Mr. Bradley, the car accountant, get the information to make such a report?

A. Get it from the East St. Louis office.

Q. From your yard clerk?

A. Yes, sir—no, sir; it would come from my office.

Q. So he would get the information from your office (exhibiting a paper obtained from a package in front of Mr. A. M. Gregory)?

98 Mr. WILSON: What is this (examining the paper)?

Q. I want to show that that report was made and presented to the insurance companies.

Mr. WILSON: This is our paper and we object to your using it. We decline to permit you to use that.

Q. Did you make out a statement, Mr. Calvert, and swear to it, containing a list of cars and contents damaged at the fire for the purpose of making a claim on the insurance companies?

A. I made a statement and swore to it, but I don't remember just the wording of my statement at the present time. I wish to say one thing: You question me as to the mode of procedure on general car accounts, but this is another thing; please bear that in mind.

Q. I don't understand.

A. I say that you have been questioning me with reference to the manner in which our general car accountant in Springfield handles his business; don't overlook that matter when you bring up questions with regard to whatever communications I have had on another subject.

Q. Don't know as I will go into that matter if you object.

Mr. WILSON: A paper prepared with reference to insurance—an entirely different phase.

Testimony of W. E. Beacham.

W. E. BEACHAM sworn.

Direct by Mr. HANSON:

Q. What is your business?
A. Car accountant of the Chicago, Milwaukee and St. Paul railroad.
Q. Where do you live?
A. In Chicago.
Q. How long have you been in that position?
A. Entered the service first in 1873.
Q. Never mind giving a history of your service with the road; how long have you been car accountant; for the last three years?
A. Yes, sir.
Q. Located at Chicago?
A. Yes, sir.
Q. What are the duties of a car accountant?
A. To keep a record of the company's rolling stock.
Q. You mean cars?
A. Yes, sir.
Q. For the purpose of knowing where they are?
A. For the purpose of locating them, keeping them together and accounting for them.
99 Q. Are you familiar with the custom which prevailed between railroad companies, their mode of accounting to each other for cars?
A. Yes, sir.
Q. State as briefly as you can to the master what that custom is.
A. The practice is for each road to render a report to the other of all cars delivered to connecting lines.
Q. Give an illustration.
A. Well, for example, if one of the cars is delivered by the Chicago, Peoria and St. Louis to the St. Louis Terminal Association, it is Mr. Bradley's practice, the car accountant of the C., P. and St. L. to make what we call a junction report, to me, showing the date on which that took place.
Q. Giving the number of the car?
A. Number of the car and date of the delivery.
Q. Take these cars in question, some of them starting at Prairie du Chien, Wisconsin, going over the line of the Chicago, Milwaukee and St. Paul Railroad Company, to Rock Island; these cars are consigned to East St. Louis. We deliver them to what line there?
A. We deliver them to the Chicago, Rock Island and Pacific or through that road to the Rock Island and Peoria, and the Rock Island and Peoria take them to Peoria and deliver them through the Peoria and Pekin Union to the C., P. & St. L.
Q. Now, when that was delivered to the C., P. & St. L., you would

be notified by the Rock Island and Peoria Company, would you not?

A. Yes, sir.

Q. When those cars reached East St. Louis and a delivery was made to the Railroad Terminal Association at St. Louis, the Chicago, Peoria and St. Louis would notify you of that delivery, would it not?

A. Yes, sir.

Q. Have you heard and have you gone over the list of cars which I read to Mr. Phelps, commencing with Chicago, Milwaukee and St. Paul car number thirty-two eighteen, and ending with the same company's car, number forty-six nine ninety-two, being thirty-eight cars in all, to be familiar with them?

A. Yes, sir.

Q. Have you any report or notice from the receiver of the Chicago, Peoria and St. Louis Railway Company, of the delivery of any one of these cars to the Terminal Association at St. Louis?

A. No, sir.

Q. Have you gone over each particular car with your reports?

100 A. Yes, sir; I have checked them carefully, and several times.

Q. What do you find?

A. I find in each and every case a delivery by the Rock Island and Peoria to the C., P. & St. L., and there the record breaks.

Q. You have no report from the receiver of the Chicago, Peoria and St. Louis of having delivered them to any connecting line?

A. No, sir.

Q. That is up to October 28, 1894, and including that date?

A. Yes, sir.

Q. Did the receiver of the Chicago, Peoria & St. Louis, on October 28, 1894, report the delivery of any cars of the Chicago, Milwaukee and St. Paul road to the Railroad Terminal Association at St. Louis; if so, what cars, and if you have the notices, please produce them?

A. I have a notice which we call the junction report, signed by W. R. Bradley, the car accountant of the C., P. & St. L., dated October 28, 1894, at Springfield, Illinois, which reads: Report of Chicago, Milwaukee and St. Paul cars delivered to our connections. He gives the numbers of five cars delivered to the Wiggins ferry and three delivered to the Eads bridge, which is the St. Louis Terminal Association of St. Louis; the numbers of these last three cars are twenty-one hundred, sixteen five sixty-two and thirty-one eight seventy-two.

Mr. WILSON: Are those cars in controversy?

Q. No, sir; simply to show the custom which prevailed.

(Objection.)

Q. You say the Eads bridge is the same as what?

A. As the St. Louis Terminal Association of St. Louis.

Q. Is that abbreviation used by car accountants?

A. The bridge was formerly known—bridge across the Mississippi river, and that was the way it was designated in the first place, and they still adhere to that method of designating the destination.

Q. Instead of saying Railroad Association of St. Louis?

A. Yes, sir.

Q. You say you were notified by the car accountant of the receiver that on the 28th of October, 1894, three cars were delivered by him to——

A. The Eads bridge.

Q. Were any more cars delivered on that day by the receiver to the Railroad Terminal Association?

A. I have no report of any.

Q. Mr. Phelps testified this morning that car twenty-one hundred, Chicago, Milwaukee and St. Paul, and car of the same com-
101 pany, sixteen five sixty-two, were delivered by the receiver to the Terminal Railroad Association of St. Louis on the 28th of October, 1894; that is, bills of lading or waybills were delivered by the receiver to the Terminal Association of these two cars on that day; have you any report from the car accountant of the receiver covering those two cars?

A. I have just given those numbers in my previous answer.

Q. Then you did have a report?

A. I have a report of those two cars.

Q. I will offer this report in evidence (marked Exhibit "E"); are these junction reports, besides being customary, made with reference to the rules and regulations of the American Railway Association?

A. I can't say as to that, but I know they are made in conformity to the agreement adopted by the International Association of Car Companies.

Q. By a resolution?

A. Yes, sir; and I believe there is a resolution passed to that effect by the American Railway Association, but I am not certain.

Q. I call your attention to this resolution, adopted on April 13, 1887, by the American Railway Association (reading).

A. That covers the case.

Mr. WILSON: Know whether the C., P. & St. L. is a member of the association?

Q. I was going to ask; do you know whether the Chicago, Peoria and St. Louis is a member of that association?

A. I am not positive, but it is a member of the International Car Companies' Association, which is the same thing.

Q. What you have been testifying to is the long-continued practice and custom as to making these reports?

A. Yes, sir.

Q. I will now show you our Exhibit "C," containing a statement of twenty-four cars of the Chicago, Milwaukee and St. Paul, presented to the witness Felps, showing the car numbers, their initials and date of arrival over the line of the receiver at East St. Louis and also the date of the delivery by the receiver to the Terminal Railroad Association, together with the date of billing; C., M. & St. P.

cars number nineteen seven thirty six, the waybill for the car delivered by the receiver to the Railroad Association on October 20th; have you any junction report from the receiver on that car?

A. Yes, sir; October 20, reported as delivered to the Eads bridge on that date.

Mr. WILSON; Those involved in the fire?

A. No, sir; simply to *simply to* establish the custom.

(Objection.—Irrelevant and incompetent.)

102 Q. That car arrived at East St. Louis, September twenty-third at six fifteen in the evening; did you receive any notice from the receiver in respect to that car before October 20th?

A. No, sir; I didn't receive any other report than the one I received of October twentieth, showing its delivery.

Q. Car forty-six three eighty-six, St. Paul Company, arrived at East St. Louis over the receiver's line of road on the 25th day of September at six fifteen; when did you get notice from the receiver of the delivery of that car out of his possession to any one else?

A. October twentieth.

Q. What did you receive?

A. The usual report of its delivery to Eads bridge.

Q. In whose possession was that car, under the custom and practice which prevailed with reference to keeping the account of cars, up to October twenty?

A. In possession of the C., P. & St. L.

Q. Car charged to that company until you received that notice?

A. Always stand charged so.

Q. That true of car nineteen seven thirty-six?

A. Yes, sir.

Q. It seems car thirty-five naught four, St. Paul Company, arrived over the receiver's road on the twenty-third of September at six fifteen; when did you first get notice of the delivery of that car?

A. October twentieth.

Q. Who was it delivered to?

A. The Eads bridge.

Q. In whose possession was it up to that time?

A. C., P. & St. L.

Q. Charged to that company by the St. Paul Company?

A. Yes, sir.

Q. Fifteen three seventy, St. Paul Company, arrived at East St. Louis on the second day of September, at five fifty in the evening; when did you receive notice of that car?

A. October twenty-second.

Q. Any report of the delivery of that car out of the possession of the receiver before that?

A. No, sir.

Q. To whose possession was it charged?

A. Chicago, Peoria & St. Louis.

Q. These reports you read there are not dates you get them, but the dates when made out?

A. These are the days on which the reports themselves are dated.

103 Q. Car eighty-nine thirty-six, same road, arrived over receiver's line October 14th, at eleven thirty in the evening; receive any notice with regard to that car?

A. October 23d delivered to the Eads bridge.

Q. Car sixty-three fifty-eight arrived at East St. Louis October tenth; when did you get junction report from that car?

A. Report of its delivery to the Eads bridge, dated October twenty-six.

Q. Before that, had you received any notice?

A. No, sir.

Q. Just to wind it up; under this custom the date of billing is the same date that this junction report is made out, as the witness has testified as to these other cars, is it?

(Objection.—A general objection to the relevancy.)

A. Yes, sir.

Q. It is stipulated that the balance of the cars on Exhibit "C" arrived at East St. Louis over the receiver's road on the date mentioned, under the head of date of arrival, and that the junction report, as the witness has testified, was made on the dates mentioned under the head of date of billing—under the head of C., P. & St. L. to Eads bridge; what do you mean by Eads bridge; same as Terminal Association?

A. Same as Terminal Railroad Association, and we use it to distinguish between that bridge and the Merchants' bridge; both are controlled by the same concern.

Q. The date under head of date of billing represents the date of the delivery of the bill of lading to the Terminal Association?

A. So I understand.

Q. Now you testified, you received no junction report of the cars of the C., M. & St. P. of the list I read this morning, commencing with C., M. & St. Paul car number thirty-two eighteen and ending same company car number forty-six ninety-two, up to the time of the fire, received no junction report from the receiver?

A. No, sir; received no junction report from the receiver.

Q. As having made any delivery of any of these cars at East St. Louis to any other connection?

A. No, sir.

Q. In whose possession were these cars I have spoken of, these thirty-eight cars, who were they charged to?

A. Chicago, Peoria and St. Louis railroad.

Q. These thirty-seven cars—as I understand—thirty-seven were totally destroyed by fire?

A. Thirty-seven.

Q. In that list of thirty-eight cars, one car, number twelve,

104 was included as destroyed, when in fact it was not, as I understand.

A. It was damaged, but afterwards repaired and returned.

Q. By whom was it repaired?

A. C., P. & St. L.

Q. A number of cars of the C., M. & St. P. damaged but not destroyed at that fire, October twenty-eight, 1894?

A. There were seventeen other cars reported by Mr. Bradley, the car accountant as having been damaged in that fire. (Car.)

Q. I will show you a telegram you sent to Mr. Bradley, November 1st, and his reply November 2d, and I will ask you whether that was sent and whether that was the reply you received.

A. Yes, sir; that is the telegram and that is his letter in reply, enclosing the list of cars.

Q. I offer that in evidence. (Marked Exhibit "F.") These seventeen cars reported as damaged, in whose possession were they at the time they were damaged?

A. C, P. & St. L.

Q. Had you received any junction reports with respect to any one of those seventeen cars from the accountant of the receiver as having been delivered to any connection, October 28th or prior?

A. No, sir.

Q. Do you know what was done with these seventeen cars by the receiver, with respect to taking charge of them after the fire and repairing?

A. They were repaired.

Q. Were they afterwards——

A. Subsequently returned to us.

Q. So these seventeen cars were returned repaired?

A. Yes, sir; put in good repair by Mr. Hemphill.

Q. Who was Hemphill?

A. Master car-builder of the receiver.

Q. Repaired by him?

A. Yes, sir.

Cross-examination by Mr. WILSON:

Q. You say the cars in this list of which you have made an exhibit were in the possessson of the Chicago, Peoria and St. Louis Railway Company, or its receiver, on October 28, 1894; what ground have you for making that statement—how do you know it?

A. By reports.

Q. You did have a report then of the car accountant of the receiver of the Chicago, Peoria and St. Louis touching these cars?

105 A. No, sir.

Q. Whose report did you have then, upon which you predicate your distinct and specific statement that they were in the possession of the Chicago, Peoria and St. Louis on that date?

A. Report of the Rock Island and Peoria railroad.

Q. I object then, Mr. Master, and make a motion to strike out that portion of the testimony of this witness, in which he specifically states the cars covered by this list were in the possession of the receiver of the Chicago, Peoria and St. Louis on this date, upon the

ground that the witness now states it was upon hearsay evidence and not upon any personal knowledge of his own.

The MASTER: I overrule the motion.

Q. We except to that ruling; as a matter of fact, Mr. Beacham, were you at East St. Louis on the 28th of October, 1894, so as to have or obtain any personal knowledge of the physical possession of these cars, whether in the possession of the Chicago, Peoria and St. Louis or not?

A. No, sir.

Q. Of your own immediate personal knowledge do you know anything about the question as to where these cars were on that day?

A. My personal knowledge; no, sir.

Q. Did you have any report from Bradley, the car accountant, or any of the agents of the receiver, touching the cars lost or damaged at East St. Louis, except those that you have offered in evidence?

A. No, sir.

Mr. HANSON: I offer those reports in evidence.

(Objection; as irrelevant and incompetent.)

(Marked Exhibit "G.")

Testimony of George H. Phelps.

Mr. PHELPS recalled.

Direct by Mr. HANSON:

Q. There were seventeen cars of the Chicago, Milwaukee and St. Paul reported by the car accountant of the receiver, under date of November 2, 1894, to the car accountant of the Chicago, Milwaukee and St. Paul, as having been damaged by the fire of October 28, 1894, at East St. Louis; have you examined the records, and can you state whether those seventeen cars were on the tracks marked on that plat with red ink, at the time of the fire?

A. Yes, sir.

Q. Can you state when those cars arrived at East St. Louis?

A. Yes, sir.

106 Q. Go on and state the number of the car and the date of arrival.

A. Car one seventy-eight M. & N. arrived in East St. Louis October twenty-four; number twelve, C., M. & St. P. arrived October twenty-fifth; forty-two sixty-eight, C., M. & St. P., arrived October twenty-sixth; same company, fifty-nine naught six, October twenty-seventh; the same, seventy-two eighty-six, October twenty-seven; the same, seventy-five fifty-two, October twenty-seven; the same, fifteen two fifty-four, October twenty-four; the same, sixteen eight naught two, October twenty-fifth; the same, seventeen eight sixty-eight, Oc-

tober twenty-eight; the same, thirty thousand two hundred and ninety, October twenty-eight; the same, thirty-one nine fifty, October twenty-fourth; the same, thirty-six naught eighty-eight, October twenty-six; the same, forty-three two sixty-four, October, twenty-eight; the same, forty-five nine sixty-four, October twenty-eight; the same, forty-six six fifty-eight, October twenty-fourth; the same, forty-seven six fifty-four, October twenty-seven; 44562, October 27th.

Q. Were any waybills delivered by the receiver for any of these cars to the Terminal Association?

A. No, sir.

Q. Now, right in that connection I want to ask Mr. Beacham a question.

Testimony of W. E. Beacham.

Mr. BEACHAM recalled.

Direct by Mr. HANSON:

Q. With respect to these seventeen cars damaged but not destroyed, just mentioned, were there any junction reports made by the receiver to the St. Paul Company as having delivered these cars to the Terminal Railroad Association?

A. No, sir.

Q. Or anybody else?

A. No, sir; subsequently——

Q. I mean October twenty-eighth and prior thereto.

A. No, sir.

Cross-examination by Mr. WILSON:

Q. I wish you would complete that statement beginning with the word subsequently, from which you *would* cut off.

A. Subsequently the cars were repaired, and then they went through the regular channel, and the reports followed.

107 *Testimony of George H. Phelps.*

Mr. PHELPS recalled.

Direct by Mr. HANSEN:

Q. I want to ask with respect to the following C., B. & Q. cars, ten eight fourteen, eleven nine sixty-two, fourteen three eighty-five, nineteen nineteen, whether any waybills had been delivered to the Terminal Association by the receiver prior to and including October twenty-eight, 1894?

A. No, sir.

Q. You would say it also, with reference to the St. Louis, Belleville and Southern Illinois car, twenty-nine seventy-five?

A. A case just the same, no waybill delivered.

Q. Now, if there had been a waybill delivered for any one of these C., B. & Q. cars, or for the St. Louis, Belleville & Southern Illinois car, or for any one of the thirty-seven C., M. & St. P. cars, while they were standing on the tracks marked red, what would have been done by the Terminal Association with respect to those cars?

A. The cars would have been taken out of that yard and forwarded as per instructions on the waybill.

Q. Is this custom which you have testified to the custom you have worked under—with the receiver, under the agreement introduced in evidence, with reference to switching cars and delivery of cars after you got the waybill?

A. Yes, sir.

Cross-examination by Mr. WILSON:

Q. If the cars were destroyed by fire, how could they have been delivered to you?

A. Couldn't have been delivered after the destruction of the cars.

Q. How do you know, in point of fact, that these cars, about which you have been examined, were not delivered to the Terminal Association?

A. For the simple reason that no waybills had been furnished, and we could not move them, and the delivery of the car is not complete until the waybill is furnished.

Q. I will ask you if your engine did not handle those cars?

A. Had handled them on arrival, in breaking up the train, for which we were paid.

Q. I will ask you if you didn't take possession of them in that way?

108 A. Can't say we did.

Q. You say you didn't take possession of the cars?

A. That is what I say, yes, sir.

Q. Did you know personally about each of these cars, as to whether they had been, or not, delivered?

A. Consulted the records.

Q. Who made the records?

A. Clerks in our employ.

Q. I asked you as to whether you knew personally as to whether these cars had been delivered to the railroad association.

A. Personally, I can't say, of course.

Mr. WILSON: I would like to call the attention of the master to the subject of the statement of appearances in this case.

The MASTER: Yes, sir; it is proper that the appearance should be stated.

Mr. HANSON: For the petitioners appear George P. Cary and Burton Hanson.

Mr. WILSON: For the receiver Bluford Wilson and P. B. Warren; but, if your honor please, the record should also show that Mr. Watts, counsel for the Terminal Association of St. Louis, was present during the examination of all the witnesses, and was consulted

by counsel for the petitioners. I ask that the record should call the attention of your honor to that fact. From our standpoint, the question is whether the receiver of the Chicago, Peoria and St. Louis, or the Terminal Railroad Association of St. Louis, is the guilty party.

The MASTER: I have no knowledge of Mr. Watts' connection with this matter.

Mr. WILSON: I state to the master that Mr. Watts is general counsel for the Terminal Association, and I call your attention to the fact that he has been in consultation with Mr. Hanson and Mr. Cary, who represent the petitioners in this case.

The MASTER: I will receive your communication, and give it whatever attention it may seem to require.

109 *Testimony of A. M. Gregory.*

A. M. GREGORY sworn.

Direct by Mr. HANSON:

Q. You are the claim agent of the receiver in this proceeding?
A. Yes, sir.
Q. Have you in your possession among the papers in this claim a sworn statement of the loss, which was made for the purpose of presenting the claim to the insurance companies?
A. Yes, sir.
Q. Will you produce that statement?

Mr. WILSON: I decline on behalf of the receiver to produce the statement, made up with reference to another matter.

Q. I offer that statement in evidence, a statement made by Mr. Calvert, agent of the receiver at East St. Louis, and sworn to, which states among other things that the cars in this controversy, the property in controversy, was on the tracks of the Terminal Railroad Association; which tracks were used by the receiver in handling its cars.

Mr. WILSON: I object, Mr. Master, to the version of Mr. Hanson, as to the contents of the papers he proposes to introduce; and if he has such a paper, and it is in his possession, that is another question.

Q. The paper is in the possession of the witness.

The MASTER: I don't think you are entitled to state the contents of the paper, and I don't think you are entitled to the paper, unless you have given proper notice and demand.

Q. You have that paper in court, have you, Mr. Gregory?
A. The original is in the possession of the receiver of the road.
Q. In fact, in whose possession is it now?
A. I think it is here in court.

Q. I think the rule is, where a paper is in court before the witness, the court can direct him to produce it.

A. It is not under my control; all of those papers are under the control of the receiver of the road.

Q. In the hands of your attorney, is it not?

A. It is.

Q. I now ask the master to direct the witness to produce the paper?

Mr. WILSON: I call attention to the fact that the witness states the papers are not under his control, but under my control as general counsel for the receiver. While I am not admitting
110 there is anything whatever in these papers that would in any degree prejudice the case of the receiver, I avail myself of my legal right not to give it to the other side, except upon proper notice and due description of its contents.

Q. These papers have been with the claim papers in your office all the time?

A. Have been back and forth; I considered they were in the possession of the receiver.

Q. But in fact they were in your possession, in your office?

A. A portion of the time, and a portion of the time in the counsel's office?

Q. You brought them here to the court?

A. Brought them under the direction of the general counsel of the road.

Q. Had them there in your possession until you went on the witness stand?

A. Didn't consider I had possession; I considered the possession of the papers was in the hands of the general counsel of the road, not in my possession at all.

Q. The rule is, when papers are in court it dispenses with any necessity for giving notice?

Mr. WILSON: I decline to produce the paper.

The MASTER: Gentlemen, this is one of the cases in which I prefer the direction of the court should be taken; either I take it or you. Without any preliminary notice or having had an opportunity to consider the question carefully, I would not like to take the responsibility.

Q. To identify the paper, it is a statement made under date of December 22, 1884, sworn to by W. H. Calvert, local agent of the receiver at East St. Louis, and contains a list of the cars and the extent of damage also to the property or contents of the cars. If the master declines to act I will let the matter rest for the present. That is my case, reserving, of course, the privilege of introducing further testimony hereafter if I see fit.

Cross-examination by Mr. WILSON:

Q. State under whose general direction these records were made up, and under whose direction your office is in the organization of the receiver?

A. Under the direction of the general solicitor of the road; my investigation and reports are made up under instructions furnished me.

Mr. HANSON: I also introduce these letters (marked Exhibits "H," "I" and "K").

111 EXHIBIT "A."

Memorandum of an Agreement, Aug. 1, 1892.

Memorandum of an agreement, made this first day of August, A. D. 1892, by and between the Terminal Railroad Association of St. Louis, party of the first part, and the Chicago, Peoria and St. Louis Railway Company, party of the second part, witnesseth:

That whereas, the party of the first part undertakes to give the party of the second part terminal facilities at East St. Louis, Illinois, for the handling of its trains, care of its engines and cars, and the handling and care of its freight, under the following terms and conditions:

First. It is agreed that the party of the first part shall furnish the necessary yard room and track facilities in their yards in East St. Louis, Illinois, as now located, and the necessary switch-engines and yardmen to do the switching of the party of the second part, in the making up and breaking up of all freight trains that depart from, and arrive at East St. Louis, and to furnish storage-room for a reasonable number of cars necessary to properly take care of and handle the business of the party of the second part, not exceeding one hundred and fifty (150) cars at any one time; and the charge for the facilities and the work above named, shall be at the rate of fifty cents (50) per loaded car in and out, except cars on which the party of the first part receives a bridge toll, which will be handled free; empty cars in and out free.

Second. Cars made "bad order" by and during the making up and breaking up of trains of the party of the second part to be repaired by the party of the second part, and the party of the second part shall furnish its own car-inspectors.

All cars made "bad order" outside of the yards set aside for the use of the party of the second part shall be repaired by the party causing the damage.

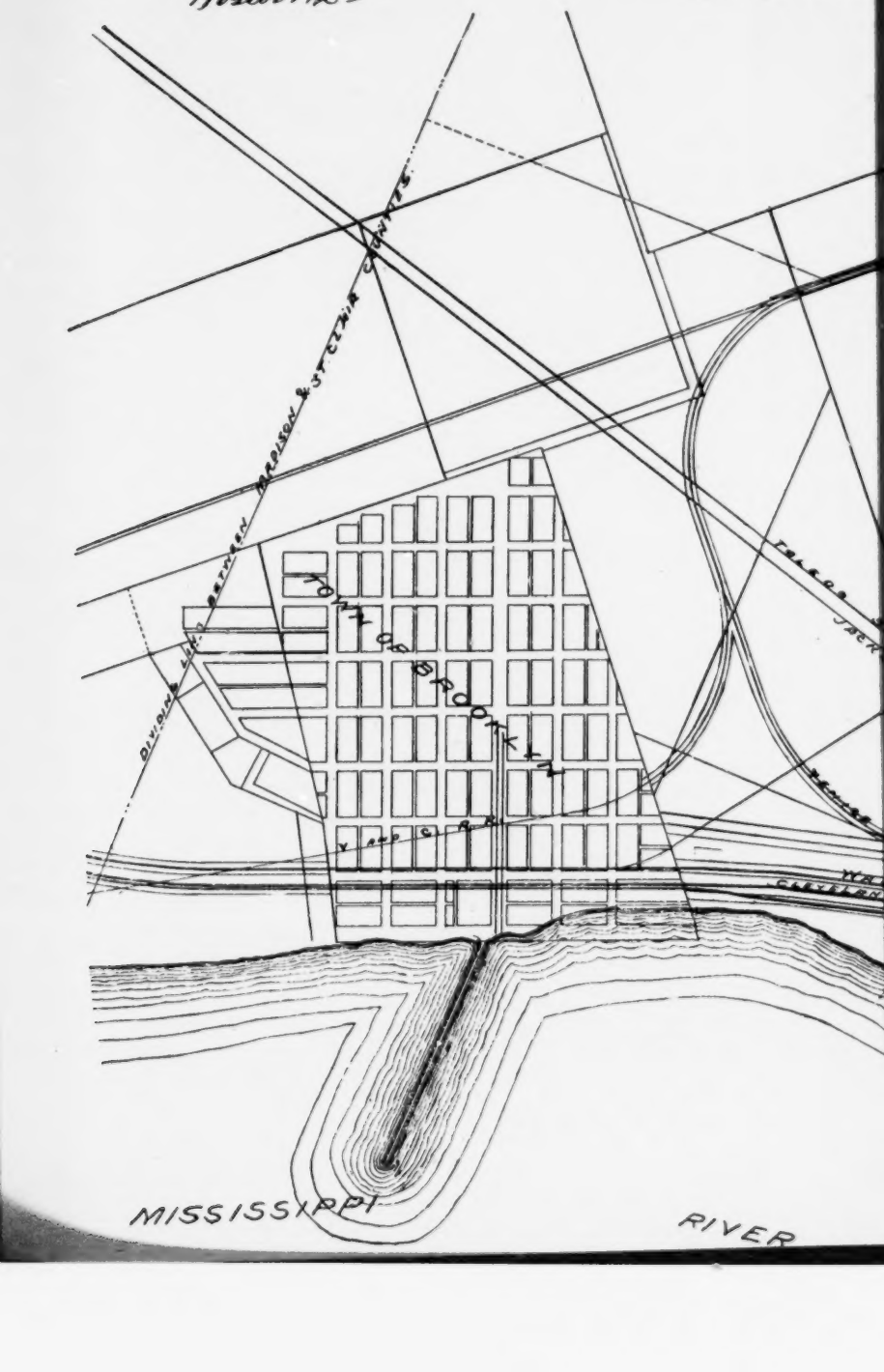
Third. For all loads to and from the National stock yards, the party of the second part is to pay the party of the first part one (1) dollar per car in and out, inclusive of the charge for making up and breaking up of trains, but not the trackage charge at National stock yards.

Fourth. All cars consigned to and from the East St. Louis freight-

No 285.
Raw
Bosworth
} p. 113

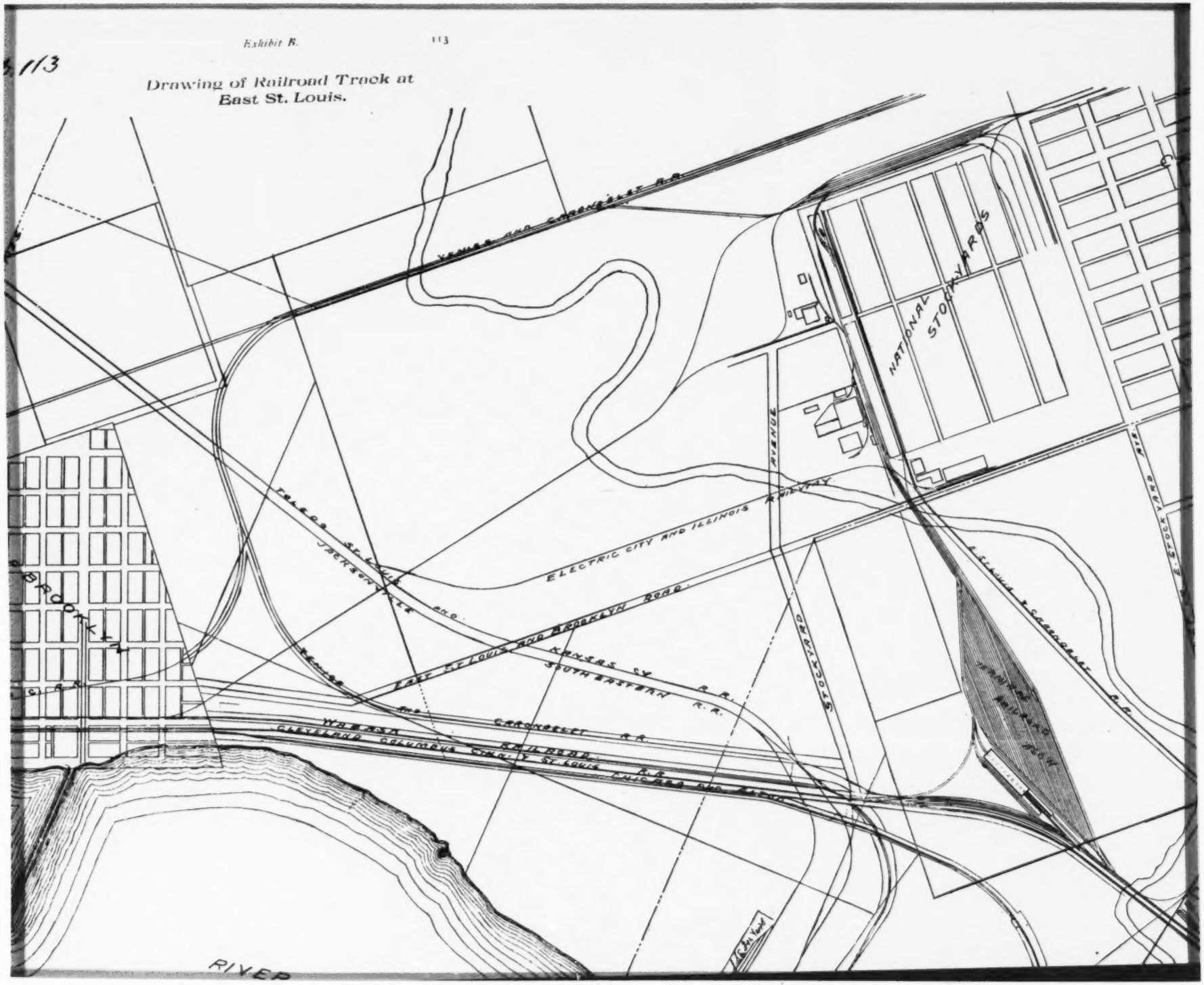
Exhibit B.

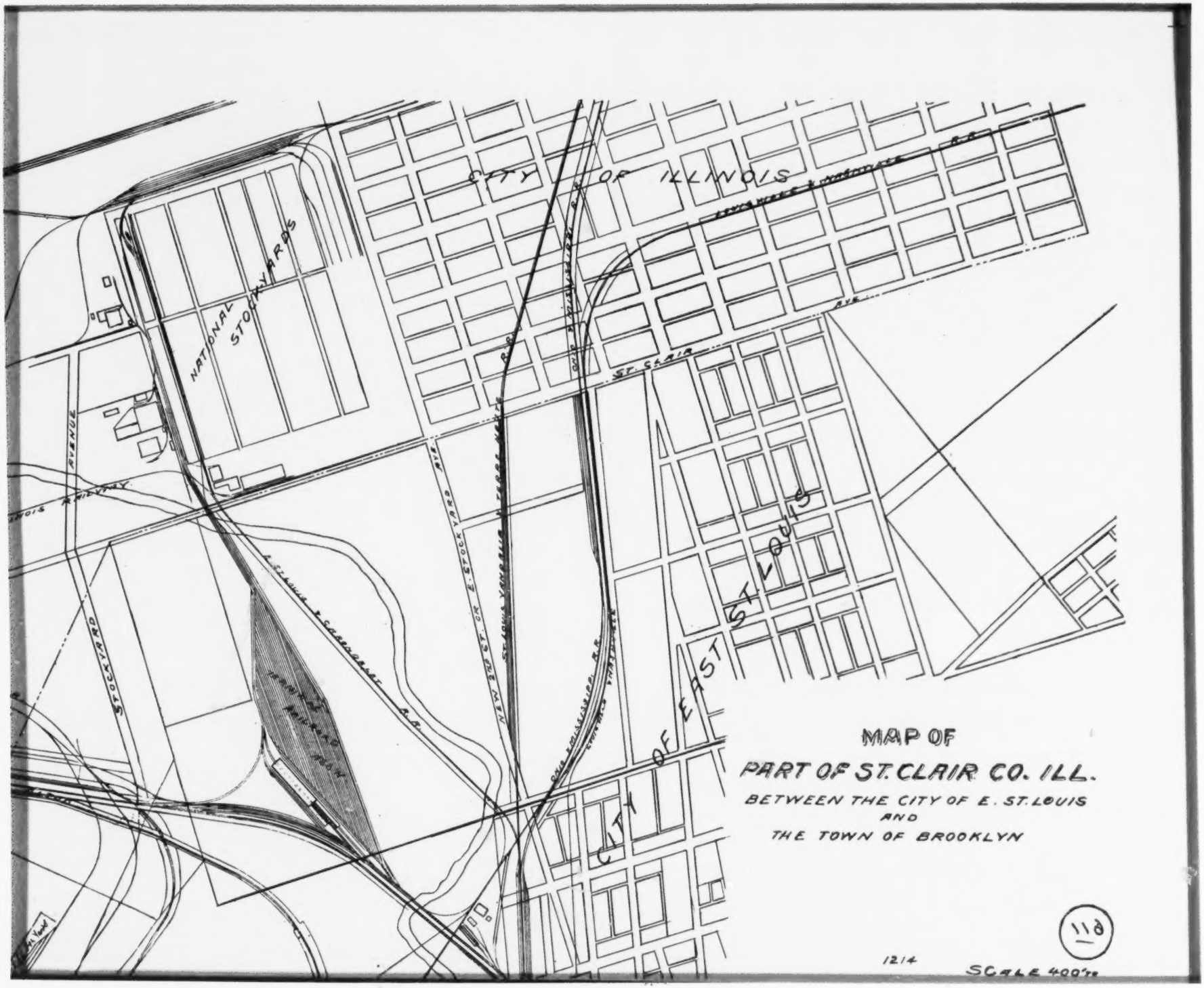
Drawing of Railroad T
East St. Louis.



113

Drawing of Railroad Track at East St. Louis.




CITY OF ILLINOIS
NATIONAL STOCK YARDS
ST. CLAIR AVE
AVENUE
CITY OF EAST ST LOUIS
MAP OF
PART OF ST. CLAIR CO. ILL.
BETWEEN THE CITY OF E. ST. LOUIS
AND
THE TOWN OF BROOKLYN
118
1214
SCALE 400'to

house of the party of the second part, to be switched to and from the Wiggins transfer tracks without extra charge. Regular switching charges and rules to apply on all other cars to and from connections, the party of the first part to be governed in making its collections by instructions shown on billing to it as to who should pay. In the absence of any instructions, the switching charges will follow the car.

112 Fifth. The party of the first part to furnish track room upon which the engines of the party of the second part can be switched and cared for and turned, as may be required; the care of such engines to be under the supervision of the party of the first part; the price for the service rendered to be agreed upon by the master mechanic of the party of the first part and the superintendent of motive power and machinery of the party of the second part.

This contract to be in force from and after the 1st day of August, 1892, and to continue for six months from that date, and to be renewed from time to time, as desired, at the expiration thereof, if satisfactory to both parties.

In witness whereof, the parties hereto have caused the same to be executed in duplicate this — day of ——, A. D. 1892.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
By J. O. VAN WINKLER,
General Superintendent.

Attest: —— ——, *Secretary.*

CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY,
By W. S. HOOK, *President.*

Attest: MARCUS HOOK, *Secretary.*

(Here follows map marked page 113.)

114 EXHIBIT "C."

Car.	Initial.	Date arrived, J. S. E.	Date delivered.	Bridge.	Date of billing.	C., P. & St. L. to Eads bridge.
19736	C., M. & St. P.	Sept. 23	6.15 p. m.	Oct. 20	Oct. 20	Oct. 20
46386	"	Sept. 25	6.15 p. m.	Oct. 20	Oct. 20	Oct. 20
3504	"	Sept. 25	6.15 p. m.	Oct. 20	Oct. 20	Oct. 20
15370	"	Sept. 22	5.50 p. m.	Oct. 22	Oct. 22	Oct. 22
8936	"	Oct. 14	11.30 p. m.	Oct. 23	Oct. 23	Oct. 23
6358	"	Oct. 10	6.10 p. m.	Oct. 26	Oct. 26	Oct. 26
43348	"	Oct. 11	6.10 p. m.	Oct. 26	Oct. 26	Oct. 26
17262	"	Sept. 25	9.30 a. m.	Nov. 1	Oct. 31	Nov. 1
46010	"	Sept. 22	9.30 a. m.	Nov. 1	Oct. 31	Nov. 1
19614	"	Sept. 24	6.00 p. m.	Oct. 27	Oct. 27	Oct. 27
14998	"	Oct. 2	5.55 p. m.	Oct. 24	Oct. 24	Oct. 24
13974	"	Oct. 10	11.30 p. m.	Oct. 23	Oct. 23	Oct. 23
21676	"	Sept. 30	2.15 p. m.	Oct. 10	Oct. 10	Oct. 10
7302	"	Oct. 2	2.15 p. m.	Oct. 10	Oct. 10	Oct. 10
3644	"	Sept. 19	2.15 p. m.	Oct. 10	Oct. 10	Oct. 10
670	"	Sept. 18	2.15 p. m.	Oct. 10	Oct. 10	Oct. 10
33194	"	Sept. 17	3.40 p. m.	Oct. 13	Oct. 13	Oct. 13
13762	"	Sept. 18	4.35 p. m.	Oct. 17	Oct. 17	Oct. 17
38476	"	Sept. 20	6.35 p. m.	Oct. 2	Oct. 2	Oct. 2
32402	"	Sept. 19	6.35 p. m.	Oct. 2	Oct. 2	Oct. 2
8296	"	Sept. 21	5.00 p. m.	Oct. 5	Oct. 5	Oct. 5
46092	"	Sept. 17	6.35 p. m.	Oct. 2	Oct. 2	Oct. 2
12372	"	Sept. 17	6.35 p. m.	Oct. 2	Oct. 2	Oct. 2
1304	"	Sept. 17	6.15 p. m.	Oct. 6	Oct. 6	Oct. 6
14398	"	Sept. 26	5.50 p. m.	Oct. 8	Oct. 8	Oct. 8
896	M. & N.	Sept. 17	6.35 p. m.	Oct. 2	Oct. 2	Oct. 2

EXHIBIT "D."

Stipulation of Parties as to Making Proof, with Exhibits Thereto.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee and St. Paul Railway
115 Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

For the purpose of saving the labor and expense of making proof thereof it is stipulated by the parties to these proceedings as follows, to wit:

1. That the petitioner, Carr, Ryder & Engler Company, is a corporation, as alleged, having its place of business at the city of Dubuque, Iowa, and that on the 20th day of October, 1894, it delivered to the Chicago, Milwaukee and St. Paul Railway Company at said Dubuque, the property mentioned in its petition filed herein, which property was consigned to May & Thomas Hardware Company, Birmingham, Alabama, by way of East St. Louis, Illinois, and was loaded in a car of the Rock Island and Peoria Railway Company, No. 1004, and was to be transported to destination, pursuant to the bill of lading issued therefor, which bill of lading is attached to this stipulation, marked Exhibit "A," and is made part hereof; that while said property was in transit it was destroyed by fire at said East St. Louis on the evening of the 28th of October, 1894; that at the time it was so destroyed the said petitioner was the owner thereof; that said property so destroyed was of the value of seven hundred and seventy-seven dollars and $\frac{28}{100}$ ($777.28), and that said petitioner was damaged in said sum of $777.28 on account of said property having been so destroyed, and that the petitioner is entitled to recover that amount, with interest, if it shall be adjudged that it is entitled to recover in this proceeding.

2. That the Chicago, Milwaukee & St. Paul Railway Company is a corporation, as alleged, having its principal office at the city of Milwaukee, Wisconsin; that on the 28th day of October, 1894, it was the owner of thirty-eight (38) cars mentioned and described in its petition on file herein; that during the evening of said 28th day

of October, the said cars, while on the tracks of the Terminal Railroad Association of St. Louis in its yard at East St. Louis, commonly used by the receiver herein under the agreement between said association and the Chicago, Peoria & St. Louis Railway Company, dated August 1, 1892, were damaged by fire at East St. Louis in the State of Illinois; that each one of said cars was consigned as per bill of lading and waybills introduced in evidence. That the amount of damage to each of said cars, except car No. 12, is as stated in the petition of said company under the heading "Net loss and salvage," and that the total amount of damage to said cars is $9,033.73, which amount the Chicago, Milwaukee & St. Paul Railway Company is entitled to recover, if it shall be adjudged that it is entitled to recover in this proceeding.

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3. That said petitioner, W. W. Cargill Company is a corporation, as alleged, and that at the dates and times and at the place in its petition mentioned, it delivered to the Chicago, Milwaukee & St. Paul Railway Company four (4) car-loads of barley in cars, as stated in its petition, consigned to the Teichman Commission Company, St. Louis, Mo., via East St. Louis, Illinois. That receipts of which Exhibits B, C, D and E attached to this stipulation are copies, were given by said railway company at the time said barley was received by it for transportation. That said barley was destroyed by fire at said East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioner and was of the value of twelve hundred and fifty-three dollars and $\frac{23}{100}$ ($1,253.23); that the petitioner was damaged in that sum and is entitled to recover that amount and interest, if it shall be adjudged that it is entitled to recover in this proceeding.

4. That the petitioner The S. Y. Hyde Elevator Company, is a corporation, as alleged, and that at the dates and times, and at the places in its petition mentioned, it delivered to the Chicago, Milwaukee & St. Paul Railway Company six (6) car-loads of barley in cars as stated in its petition, consigned to the Teichman Commission Company, St. Louis, Missouri, via East St. Louis, Illinois. That receipts, the same in form as Exhibits B, C, D & E attached to this stipulation, were given by said railway company at the time said barley was received by it for transportation; that said barley was destroyed by fire at said East St. Louis, during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioner and was of the value of two thousand one hundred and fifty-four dollars and $\frac{53}{100}$ ($2,154.53): that the petitioner was damaged in that sum, and is entitled to recover that amount and interest if it shall be adjudged that it is entitled to recover in this proceeding.

5. That the petitioner, Jacob Rau, of Wykoff, Minnesota, at the dates and times and at the place in his petition mentioned, delivered to the Chicago, Milwaukee & St. Paul Railway Company two (2) car-loads of barley in cars as stated in his petition, consigned to the Orthwein Grain Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts, the same in form as Exhibits B C D and E attached to this stipulation, were given him by said rail-

way company at the time said barley was received for trans-
117 portation; that said barley was destroyed by fire at said East St. Louis, during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioner and was of the value of eleven hundred, forty-four dollars and $\frac{7}{100}$ ($1,144.07); that the petitioner was damaged in that sum and is entitled to recover that amount and interest, if it shall be adjudged that it is entitled to recover in this proceeding.

6. That the petitioners, James N. Gilchrist and Colin F. Bell, are partners under the firm name of Gilchrist & Company, engaged in business at McGregor, Iowa, and that at the dates and times and at the place in their petition mentioned, they delivered to the Chicago, Milwaukee & St. Paul Railway Company two (2) car-loads of barley in cars as stated in their petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts, the same in form as Exhibits B, C, D and E attached to this stipulation, were given to them by said railway company at the time said barley was received for transportation; that said barley was destroyed by fire at East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioners, and was of the value of eight hundred and five dollars ($805); that the petitioners were damaged in that sum and are entitled to recover that amount and interest, if it shall be adjudged that they are entitled to recover in this proceeding.

7. That the petitioner, The Huntting Elevator Company, is a corporation, as alleged, and that at the dates and times and at the places in its petition mentioned, it delivered to the Chicago, Milwaukee & St. Paul Railway Company ten (10) car-loads of barley in cars, as stated in its petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts, the same in form as Exhibits B, C, D and E attached to this stipulation, were given to it by said railway company at the time said barley was received for transportation; that said barley was damaged and destroyed by fire at said East St. Louis during the night of October 28, 1894; that said barley at the time it was so damaged and destroyed belonged to the petitioner, and the loss and damage thereof amounted to the sum of twenty-six hundred dollars and ninety-five cents ($2,600 95); that the petitioner was damaged in that sum and is entitled to recover that amount and interest, if it shall be adjudged that it is entitled to recover in this proceeding.

8. That the petitioners Thomas McMichael and William McMichael are partners engaged in business at McGregor, Iowa, under the firm name of T. McMichael & Son, as alleged, and that at the dates and times and at the place in their petition mentioned they delivered to the Chicago, Milwaukee & St. Paul Railway
118 Company eight (8) car-loads of barley as stated in their petition, consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts the same in form as Exhibits B C D & E attached to this stipulation,

were given to them by said railway company at the time said barley was received for transportation; that said barley was destroyed by fire at said East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to the petitioner, and was of the value of twenty-nine hundred and forty-two dollars and $\frac{56}{100}$ ($2,942.56); that the petitioners were damaged in that sum and are entitled to recover that amount, with interest, if it shall be adjudged that they are entitled to recover in this proceeding.

9. That the petitioner Henry Rippe of Fairmount, Minnesota, at the dates and times and at the place in his petition mentioned delivered to the Chicago, Milwaukee & St. Paul Railway Company two (2) cars of barley in cars as stated in his petition, consigned to the Orthwein Grain Company, St. Louis, Mo., by way of East St. Louis; that receipts, in form as Exhibits B C D and E attached to this stipulation were given him by said railway company; that said barley was destroyed by fire at East St. Louis during the night of October 28, 1894; that said barley at the time it was so destroyed belonged to said Rippe and was of the value of $1,165.67, and that he is entitled to recover that amount and interest, if it shall be adjudged that he is entitled to recover in this proceeding.

Dated August 27, 1895.

BURTON HANSON &
GEORGE P. CARY,
Attorneys for Petitioners.

BLUFORD WILSON,
Solicitor for Receiver.

EXHIBIT "B."

No. ..... *Station* ..... LA CROSSE, Oct: 20, 1894.

RECEIVED from W. W. CARGILL CO.

in apparent good condition

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY.	WEIGHT
Teichman Com. Co. St. Louis, Mo. Car 15254 Exhibit B.	Via East St. Louis. Bulk Barley.	

As described above, contents and value unknown, to be transported by the **CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.**, over the line of this Railroad to ..... ready to be delivered at said warehouse, to the next connecting ..... company or their warehouse at ..... consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting ..... company or carrier, it being expressly agreed that said property is to be transported upon and in all respects subject to the regulations of the published tariff of said ..... company and to the conditions printed and indorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property, and it being further expressly agreed that this Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property after its arrival at its warehouse aforesaid, or for any loss or damage thereto or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

(OVER.)

J. C. HEITBAUS, Agent.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Deeds Contracts, evidences of debt, writings, or be responsible for their loss or injury.

2. No endorser, or other agent of the Corporation, is authorized to take charge of Bank Notes, Money or other valuable papers or things for carriage, or to receive, ship, carry, or deliver any perishable or rejected articles, or to be responsible for such articles.

3. Pictures, Paintings, Bullion or manufactured articles of gold and silver, or Jewelry, Watches, Plated Articles, Statuary, Musical Instruments, Glass, Silks, Laces will be carried by the Corporation, for the use of which it will be required to pay extra price for the carriage and responsibility for such articles to be paid.

4. Carriages and sleighs, whose Cases, Shackles, Shoes and Castings, Mortise, Locking Glasses, Mineral Axles only be taken at the owner's risk of fracture or injury during the course of transportation, as the loading and unloading thereof unless especially agreed to the contrary.

5. Furniture and household articles of any description will be taken only at owner's risk of breakage and rain. Household furniture especially covered in the contract.

6. Articles will not be received for transportation unless properly packed in suitable Crates, Boxes, Bales or other receptacles for the protection of the property packed, and the Company will not be responsible for any loss or damage to such articles unless the same with the name of the consignee plainly marked thereon, and the charges thereon fully paid. The Company will not be responsible for any damage to such articles occasioned by the breaking of such packages, or by the leakage of the contents thereof, unless such packing, or such leakage without the negligence or fault of the Company or its agents. All property in transitu to consignee when necessary

Goods in bundles will not be considered as properly packed, and the Company will not be responsible for any loss of parts or for the whole of such goods.

The Company is not to be responsible for any loss of parts or of the whole of Carpets, Oil Cloths, or other articles put up in rolls, unless packed in boxes.

The Company will not be responsible for any loss of parts or of the whole of Furniture, Looking Glasses, Pictures, Bedding, Mattresses, Feathers, Upholstery Goods, Trunks, Valises, Bags, Baskets, Bundles, Boxes, Crates, Barrels, Kegs, Packages, Articles or Property of any description, unless the same be packed by the owner or his agent.

7. The Company will not be responsible for the loss of any particular train or connection in time for any particular train, unless specially agreed, but will forward the same with all reasonable dispatch, as the general business of the Company will permit.

8. The Corporation will only be liable as warehousemen, after the property has been placed in their freight depot. But for loss, damage or injury to property by fire, while in their freight depot or warehouse, or in transit, no notice is required.

9. The Corporation will not be responsible for loss or injury happening to or occasioned by the acts of God, the public enemy, mobs, strikes, or the elements, or for leakage, breakage, or any unavoidable accident, or for the loss of property by fire, or for the acts of thieves, or incendiaries, or for the delay or detention of any property, or the consequences thereof, during the transportation of the consignee or consignor, and not as carriers. The Company will not be liable or responsible for any loss, damage or injury to property after the same shall have arrived at the depot of the Company in the city of destination, and the consignee shall have been notified of the arrival of the property, and a reasonable time shall have elapsed for the delivery to the owner or consignee, or his agent, after such notice.

10. Goods or property consigned to any place of the Company's line of road or to any point or place beyond its terminus, will be forwarded by the Company with all reasonable dispatch, but in such case there are no known to the station agent at said warehouse willing to receive the same immediately, for transportation, the Company will not be responsible for any loss, damage or injury to such goods or property, and the Company will not be liable or responsible for any loss, damage or injury to property after the same shall have arrived at the depot of the Company in the city of destination, and the consignee shall have been notified of the arrival of the property, and a reasonable time shall have elapsed for the delivery to the owner or consignee, or his agent, after such notice.

11. The Corporation will not be responsible for loss or damage to any article by fire or other wise, the bulk of which renders it necessary to be forwarded in open cars.

12. Goods or property consigned to any place of the Company's line of road or to any point or place beyond its terminus, will be forwarded by the Company with all reasonable dispatch, but in such case there are no known to the station agent at said warehouse willing to receive the same immediately, for transportation, the Company will not be liable or responsible for any loss, damage or injury to such goods or property, and the Company will not be liable or responsible for any loss, damage or injury to property after the same shall have arrived at the depot of the Company in the city of destination, and the consignee shall have been notified of the arrival of the property, and a reasonable time shall have elapsed for the delivery to the owner or consignee, or his agent, after such notice.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions.

All carload freight shall be subject to a minimum charge to Purchase and resale of $1 00 per car for each 24 hours detention or fraction part thereof, after the expiration of 48 hours from its arrival at destination, Sundays and legal holidays excepted, and all carload freight not unloaded within forty-eight hours, Sundays and legal holidays excepted, after the freight in a car is ready for delivery to the consignee, and the Consignee or Consignor shall pay the C., M. & St. P. Ry. Company the expense of unloading and reloading such freight, and the Company shall have a lien upon the freight in addition to its own freight charges and back charges.

1793

1183

120 *Certificate of Evidence.*

EXHIBIT "C."

No...... *Station.*.. LA CROSSE, Oct. 18, 1894.

RECEIVED from W. W. CARGILL.

in apparent good condition .....

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY	WEIGHT.
Teichman Com. Co. St. Louis, Mo. Via E. St. Louis. Exhibit C.	Barley Cars 25452–20186 30500–12856–9630 47654–9168–1100	

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to their warehouse at.....ready to be delivered at said warehouse, to the consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company in carrier, it being expressly agreed that said property is to be transported upon and in all respects subject to the regulations of the published tariff of said company and to the conditions printed and endorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property; and it being further expressly agreed that this Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property, after the arrival at its warehouse aforesaid, or for any loss or damage thereto or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

J. C. HEITBAHN, Agent.

(OVER)

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Trade Contracts, evidences of debt, Railroad Tickets, or be responsible for their loss or injury.

No Conductor, or other agent of the Corporation, is authorized to take charge of Bank Notes, Money or other valuable papers or things for an increased compensation, or to receive any perquisites or reward, for or Bullion, or manufactured articles of gold and silver, or Jewelry Watches, Clocks, Plated Articles, Statuary, Musical Instruments, Glass, Silks, Laces, will be carried by the Corporation, for the loss of which it will in writing, against the character and kind of property, and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid.

Carriages and Sleighs, Agricultural Implements, Wagons, Machinery, Stoves and Castings, Marble, Looking Glasses, Mineral Waters, Ales and Liquids put up in glass or earthenware, Cabinet Ware and Furniture will only be taken at the owner's risk of fracture or injury during transportation, and the loading and unloading of any description will be taken only on special terms and conditions, and the Company will not be responsible for any description of freight unless a receipt is taken therefor from the cars and agent.

4. Gunpowder and coal among other goods that will be taken from the cars and agent. In case of damage in consequence of the same being so stowed, the shipper or consignee will be held liable.

5. Articles will not be received for transportation unless properly packed in suitable Cases Box, Barrels or Packages, and each must be well and clearly MARKED with the name of the CONSIGNEE and of the station where they are to be delivered, and the charges will in no case be paid. The Company will in no case be responsible for loss, injury or damage which might have been avoided by ordinary and more careful and sufficient packing, or which originates from the fault or neglect of the consignor or agent in packing or in which originates when necessary.

Glass or Crockery will not be considered as properly packed, and the Company will not be responsible for any loss of parts or of the whole of such package.

No allowance for deficiency of Leakage, Breakage or other fraud, if not covered with canvas will be made.

The Corporation will not be responsible for damage occasioned by delays from storms, accidents, unavoidable causes, or by decay or injury to fruit, fish, dressed poultry or other perishable property, or from injury to property shipped in Steel, Lead or other metal Stock, and the Cartes for any particular market.

The charges on perishable property must always be prepaid.

7. The Corporation will not undertake or agree to carry property by any particular train, nor in time for any particular market, nor any time by which the transportation may be performed, nor will it be responsible for any delay in the non-delivery of such property in any certain train, or at any time at the general business of the Corporation will permit it.

8. The Corporation will only be liable as warehousemen, after the property has been placed in their freight depot. But for loss or damage to property by fire, while in their freight depot or elsewhere, the ordinary rules will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or damage happening to or occasioned by unruly or vicious horses, cattle, or other animals, however caused, to live stock or animals of any description, transported or carried upon their railway, or in their cars or vehicles.

11. The Corporation will not be responsible for loss or damage to any article by fire or other wise, the bulk of which renders it necessary to be in their Company's line of road, or any point or place on the line of the Corporation, at his warehouse within mentioned, will submit for transfer or freight-train, as the agents of the consignee or consignee, and not as carriers, the Company will not be liable at the within mentioned Company's station for delivery to the owner, consignee or to the connecting carriers or freight men for transportation.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions.

All carload freight shall be subject to a minimum charge for weighing and of 40 cents per car. All carload freight shall be removed from the depot platform and depot grounds of this road within 48 hours from its arrival at destination, and after the expiration of 72 hours, this Company shall be authority to unload and store the freight in a warehouse of this or of any other company, at the expense of unloading and warehousing same, and for such expense this Company shall have a lien upon the freight in addition to its own freight charges and back charges.

1734

409

EXHIBIT "D."

No. ..... *Station*, LA X, WIS., Oct. 12, 1894.

RECEIVED from W. W. CARGILL CO.

in apparent good condition

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY	WEIGHT.
Teichman Com. Co. St. Louis, Mo.	Cars { 20022 St. P. Bly. 32986 " "	41100 40400

Exhibit D.

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to their warehouse at ..... ready to be delivered at said warehouse, to the consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company or carrier, it being expressly agreed that said property is to be transported upon and in all respects subject to the regulations of the published tariff of said company and to the conditions printed and endorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property, and it being further expressly agreed, that this Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property, after its arrival at its warehouse aforesaid, or for any loss or damage thereto, or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

J. C. HEITBAHS, Agent.

(OVER.)

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Bonds, Coupons, Specie, Jewelry, or other articles, or be responsible for their loss or injury.

2. No Conductor, or other agent of the Corporation, is authorized to take charge of Bank Notes, Money or other valuable papers or articles, or to receive the same for safe keeping, or to receive any paper, gold or Silver Coin or Bullion, or manufactured articles of gold and silver, or Jewelry, Watches, Pictures, Plated Articles, Statuary, Musical Instruments, Glass, Glass Ware, Silk or Satin, unless the value thereof is plainly stated in writing, stating the character and kind of articles and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid.

Carriages and Buggies, Show Cases, Machinery, Stoves and Castings, Marble, Looking Glasses, Boxes, Bales or Packages, and every article of Furniture or Implements, Cabinet Ware and Furniture will only be taken at the owner's risk of Breakage or injury, and not otherwise, unless by special contract to the contrary, and the loading and unloading of all articles of any description will be taken only on special terms and at Owner's risk.

4. Grain, Flour and Provisions among other goods that will be taken from the cars and stored, in case of damage in consequence of the same being so stored, the shipper or consignee will be held liable.

5. Articles will not be received for transportation unless properly packed in suitable Cases, Boxes, Bales or Packages, and each must be well and clearly Marked on the outside with the name of the consignee and of the station where they are to be delivered, and the charges thereon will be prepaid. The Company will in no case be responsible for loss, injury or damage which might have been avoided by ordinary and careful and skillful care by the consignee or owner, or for loss or damage by fault of the consignee or owner, or subject to consignee when necessary.

Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of Lemons, Oranges or other fruit, if not covered with convex will be made.

6. The Corporation will not be responsible for damage sustained by delays from storms, accidents, or other causes, or for damage or injury to fruit, fish, dressed hogs, dressed poultry or other perishable property, or from injury to property, produce or packages, or for loss of time, or for any damage to property by fire, within the limits of the warehouses of the Corporation, and the property will be at the owner's risk from the time it is unloaded from the cars until delivered.

The charges on perishable property must always be prepaid.

The charges on letter-of-marks must always be prepaid.

7. The Corporation will not be responsible for damage sustained by delays from storms, accidents, or other causes, or for damage or injury to fruit, fish, dressed hogs, dressed poultry or other perishable property, or from injury to property, produce or packages, or for loss of time, or for any damage to property by fire, within the limits of the warehouses of the Corporation, and the property will be at the owner's risk from the time it is unloaded from the cars until delivered.

In time for any particular market, nor are limits of time fixed for the transportation of property. In case any particular train will forward the same with as reasonable dispatch as the general business of the Corporation will permit it.

8. The Corporation will only be liable as warehousemen, after the property has been placed in their freight depot. But the Company will be responsible for loss or damage to property by fire, within the freight depot or warehouse, while the same is in transit.

9. Storage at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by animals or various horses, cattle or other animals, or for any damage whatever caused to live stock or animals of any description, transported or carried upon their railway, or in their cars or vehicles.

11. The Corporation will not be responsible for loss or damage to any article by fire or otherwise, the bulk of which it is necessary to open for the purpose of delivery to the owner.

12. Books or property consigned to any person at the Company's [illegible] of road, or to any point or station on the line of road, will be delivered with as reasonable dispatch as the general business of the Corporation, at its warehouse within mentioned, will admit, and nothing in the foregoing shall be construed to require the Company to deliver such property at any other time than during the usual hours for the delivery of freight, nor at any other place than the warehouse of the Company at the station, unless the Company shall by its agent or clerk at such station, for the purpose, agree to deliver the same elsewhere.

13. No agent or clerk has authority to alter or vary any of these Rules and Conditions, and no notice given to any such agent or clerk will be deemed notice to the Company unless the same is indorsed and dated on the receipt or bill of lading by the C. M. & St. P. Ry Company the expense of unloading and warehousing same, and for such expense the Company shall have a lien upon the freight in addition to such freight rate or and such charges.

All carload Freight shall be subject to a minimum charge of the rate of freight for the expansion of 24 hours from its arrival at destination, and after the expiration of 24 hours, the Company shall be at liberty to remove the same to the warehouse of the Company at the station, and charge storage thereon as above provided.

1795

110

122

Certificate of Evidence.

EXHIBIT "E."

No. ..... *Station.* LA X, WIS., Oct. 16, 1894.

RECEIVED from W. W. CARGILL CO.

in apparent good condition .....

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY	WEIGHT.
L. Lemcke & Co.	St. P. 17272	40650
St. Louis, Mo.	M. & N. 1232	50400
Exhibit E.	Duplicate.	

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to its warehouse at ..... ready to be delivered at said warehouse, to the consignee or owner, and if the same are consigned to any point beyond the line of this Company's road ready to be delivered at said warehouse, to the next connecting company or carrier, it being expressly agreed that said property is to be transported upon and to all respects subject to the regulations of the published tariff of said company and to the conditions printed and endorsed hereon, which regulations and conditions form a part of this contract, and the acceptance of this contract is to be deemed evidence of notice of all such regulations and conditions to and of assent thereto by the shipper, consignee and owner of said property, and it being further expressly agreed that the Company assumes no liability, and is not to be held responsible as common carriers, for any loss of, or injury to said property, after its arrival at its warehouse aforesaid, or for any loss or damage thereto or any delay in transportation or delivery thereof by any connecting or succeeding company or carrier.

(OVER.)

J. C. HEITBAHN, Agent.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Deeds, Contracts, evidences of property or other writings, or be responsible for their loss or injury.

2. No conductor or other agent of the Corporation is authorized to take charge of Bank Notes, Jewelry, Precious Stones, Specie, or other valuable articles, and will not receive or carry any of the same, or permit the same to remain, for himself or for the Company, on or for such articles.

3. No Gold or Silver Coin or Bullion, or manufactured articles of gold and silver, or Jewelry, Watches, Pictures, Plated Articles, Statuary, Musical Instruments, Glass, Furniture, Bronzes, Clocks, Fancy Goods, Perfumery, Cologne, Trimmings, Silks, Satins, Velvets, or other articles of like character, will be carried unless specially agreed for in writing, stating the character and kind of such articles, and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid or agreed for.

4. Glass, Looking Glass, Show Cases, Machinery, Stoves and Castings, Marble, Looking Glasses, Mineral Acids, Sweet Potatoes, all Liquids put up in glass or earthenware, Cabinet Ware and Furniture will only be taken at the owner's risk of fracture or injury during the course of transportation, and the Company will not be liable for any damage to the same, unless caused by the willful misconduct of its agents.

5. Articles will not be received for transportation unless properly packed in suitable Crates, Boxes, Bales or Packages, and each must be well and clearly Marked with the name of the Consignee and of the station where they are to be delivered, otherwise they will not be received, and the Corporation will not be responsible for loss, injury or damage which might have been avoided by its fulfillment of these conditions. All property not delivered at proper by packed, and the Company will not be responsible for any loss of parts or of the whole of such packages.

Goods for export must be ordered as prepaid, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of Lemons, Oranges or other fruit. If not covered with canvas will be made.

6. The Corporation will not be responsible for the loss occasioned by delays from storms, accidents or unavoidable causes from injury to property, packed by it or from any other cause arising from any delay or shipment, however occasioned, but they will forward the same with as reasonable dispatch as the general business of the Corporation will permit it.

7. The Corporation will not be responsible for the property it has been placed by the consignee or owner in the cars for loading, but will forward the same with all reasonable dispatch as the general business of the Corporation will permit it.

8. The Corporation will only be responsible for property by it, while in their freight yard or storehouse, the Company will not be liable

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by any cattle, horses, sheep, swine or other animals, or to any property in consequence of the viciousness of the same, nor for any damages however caused, to live stock or animals of any description, transported or carried upon their railway or in their cars or vehicles.

11. The Corporation will not be responsible for loss or damage to any article by fire or otherwise, the bale of which is redirected by the consignee.

12. Goods or property consigned to the care of the Company a bin, of rock, or to any point or station on the line of the Corporation, at its warehouse within mentioned, will admit for carrier or freighthaul, when there are no known to the station agent acting for the purpose, of delivery, from carrier or freighthaul, as the agents of the consignor or consignee, and not as carriers. The Company will not be liable or responsible for any loss, damage or detention of such goods or property, except as to the connecting carriers or freight men for transportation.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions.

All carload freight shall be subject to a minimum charge for trackage and rental of $10 per car, and no less charge shall be made for the use of the Company's track and rental of cars for carload freight, and after the expiration of 24 hours from the time notice of the arrival of such freight has been given to the consignee, or his agent, at the station where the same is to be delivered, the Company shall have a lien upon the freight in addition to its own freight charges and lack charges.

EXHIBIT A.

Form 181.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

ALL RAIL

THROUGH FAST FREIGHT LINE.

BONDED.

J. H. HILAND, General Freight Agent, Chicago.

No. ..... Dub 11/20 1894

Received from Carr P. & E. Co. Oct 24-94

...ject to all the conditions and regulations of the published tariff of said Company, to be transported over the line of this Railroad or ...

...delivered after payment of freight to ... road order to ... a company or carrier of the same are to be forwarded beyond the lines of the ... unless consent to be secured to the piece of ... it being expressly agreed that the responsibility of this Company shall cease at this Company's depot, at which the same are to be ... issued by this Company. But this Company guarantees that the rate of freight for the transportation of said packages shall not exceed rates noted in margin of this Bill of Lading, and charges ... to the following conditions: **Printed contents of packages are correctly stated in Railroad Receipts (original and duplicate,) on which this Bill of Lading is issued,**

This Company shall not be responsible for the loss of packages or contents of which are unknown, or for leakage of any kind of Liquids, breakage of any kind of Glass, Carboys of Acid ... Articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Carriages, Furniture, Pianos, Looking-glasses, Marble, Stone, Packages of Glass or Glassware, Eggs, Hay, Hemp, ... or any article whose fresh condition is necessary to transport it, Iron cars, or Car Mileage on private property, or ... Chains, or any ... Cotton in bags, or Sacks or Bales, not for the ... Nails, Wheat, or Tobacco in Casks or Leaves, not covered by duly ... or for damage to or loss of property ... or for any loss of weights of Grain, or Coffee in bags, or

124 *Motion of Receiver to Amend Stipulation.*

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee and St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

To Burton Hanson and George P. Carey, solicitors for defendants:

Please take notice that on Wednesday, the 15th day of January, 1896, we will present a motion, a copy of which is attached hereto, to his honor Judge Allen, in his court-room at 10 o'clock in the morning, or as soon thereafter as counsel can be heard, and ask that an order be entered thereon.

BLUFORD WILSON,
Solicitor for Receiver of the Chicago, Peoria & St. Louis Railway Company.

The above notice is hereby acknowledged this — day of January, 1896.

125 *Motion of Receiver to Amend Stipulation.*

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee and St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

Motion of Receiver.

Now comes C. H. Bosworth, receiver of the Chicago, Peoria and St. Louis Railway Company, by Bluford Wilson and P. B. Warren,

his solicitors, and moves the court for leave to amend a certain stipulation entered into in the above-entitled cause on the 27th day of August, 1895, by and between the solicitors of record of the respective parties, in the following particulars, to wit:

First. At page 2, beginning on the 6th line in paragraph 3, strike out the following: "that receipts, of which Exhibits B, C, D and E, attached to this stipulation are copies, were given by said railway company at the time said barley was received by it for transportation;" and beginning on the 11th line of said paragraph 3, on page 2, strike out "belonged to the petitioner, and."

Second. In paragraph 4, beginning on the 2d line of page 3, strike out "that receipts, the same in form as Exhibits B, C, D and E, attached to this stipulation, were given by said railway company at the time said barley was received by it for transportation;" and in the said paragraph 4, on the 7th line of said page 3, strike out "belonged to the petitioner, and."

Third. On page 3, beginning on the 6th line of paragraph 5, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were given him by said railway company at the time said barley was received for transportation;" and on said page 3, beginning on the 11th line of said paragraph 5, strike out "belonged to the petitioner, and."

Fourth. On said page 3, beginning in the 8th line of para-
126 graph 6, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were giv to them by said railway company at the time said barley was received for transportation;" and on page 4, beginning in the 4th line of said page, strike out "belonged to the petitioner, and."

Fifth. On page 4, beginning in the 6th line of paragraph 7, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were given to it by said railway company at the time said barley was received for transportation;" and on said page 4, beginning in the 12th line of said paragraph 7, strike out "belonged to the petitioner, and."

Sixth. On page 4, beginning in the 8th line of paragraph 8, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were given to them by said railway company at the time said barley was received for transportation;" and on page 5, in line 2 of said page, strike out "belonged to the petitioner, and."

Seventh. On page 5, beginning in the 8th line of paragraph 9, strike out "that receipts the same in form as Exhibits B, C, D and E, attached to this stipulation, were given him by said railway company;" and on page 5, beginning in the 15th line of said paragraph 9, strike out "belonged to said Rippe, and."

And for grounds of said motion, this receiver respectfully shows unto this court, that said stipulation was entered into for the purpose of saving the labor and expense of making proof thereof; that the same was prepared by the solicitor for the intervening petitioners, and was signed by your receiver's solicitor under a misap-

prehension of the true facts, as the same have since developed in the progress of this cause.

That this receiver had no means, at the time said stipulation was entered into, of knowing that the allegations of the facts herein sought to be stricken out were untrue, as the same were wholly and exclusively within the knowledge of the petitioners. That when said stipulation was presented to his solicitor as a statement of true facts, he accepted it as the same by reason thereof; that the knowledge that the same were untrue has come to him through the evidence of the intervenors themselves.

And petitioner files herewith and asks the same to be taken as a part hereof, an affidavit in support of the foregoing, and also to the further effect that this motion is not made with a view to vex or delay the said petitioners in the prosecution of their said claims; that the same is made to avoid wrong and injury to this petitioner.

C. H. BOSWORTH,
Receiver of the Chicago, Peoria & St. Louis Railway Company,
By BLUFORD WILSON &
P. B. WARREN,
Solicitors for Receiver.

127 *Affidavit in Support of Motion.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY OF NEW YORK
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, *et al.*

UNITED STATES OF AMERICA,
Southern District of Illinois, } *ss:*

Bluford Wilson, being duly sworn, on oath deposes and says that he is solicitor for C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company; that on the 27th day of August, 1895, for and in behalf of said C. H. Bosworth, he entered into a stipulation with Burton Hanson, as solicitor for the Chicago, Milwaukee & St. Paul Railway Company and various intervening petitioners; that when he entered into said stipulation he believed it to be what it purported to be, to wit: a statement of true facts; that inasmuch as said Burton Hanson requested him to sign the stipulation, he belived that the same was prepared by said Burton Hanson; that inasmuch as certain of the facts therein alleged were wholly within the knowledge of the clients of said Burton Hanson, this affiant at that time had no means of knowing that the same were untrue;

that the knowledge that the said facts were untrue has come to him through the evidence of the intervenors themselves; and this affiant further deposes and says that the motion of the receiver herein to amend said stipulation, by striking out the allegations of all the facts which have developed in the progress of the trial to be untrue, is not made with a view to vex or delay the said petitioners in the prosecution of their said claims, but that the same is made to avoid a wrong and injury to the said receiver.

BLUFORD WILSON.

Subscribed and sworn to before me this 13th day of January, 1896.

P. B. WARREN,
Notary Public.

128 *Order Amending Stipulation, Aug.* 27, 1895.

Order amending stipulation.

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company and others.

This cause coming on to be further heard upon the motion of the receiver in the above-entitled cause for leave to amend a certain stipulation entered into between the parties hereto on the 27th day of August, 1895, and the court having heard argument of counsel and being fully advised in the premises, upon consideration thereof, does hereby order, adjudge and decree, that the said motion of the receiver be and the same is hereby granted. And the said receiver is authorized to amend the said stipulation in the particulars set out in his said motion.

And it is further ordered by the court that the petitioners and the receiver be and they are hereby granted further time to introduce evidence in support and rebuttal of the allegations of facts stricken out of said stipulation by this order.

Petitioners' evidence to be closed on February 7th, 1896, and receiver's evidence to be closed on February 22d, 1896.

EXHIBIT "E."

Report of C., M. & St. P. R'y as to Cars Delivered.

Chicago, Peoria & St. Louis railway—C. H. Bosworth, receiver.

SPRINGFIELD, ILLS., 10, 28, 1894.

Report of C., M. & St. P. cars delivered to our connections—W. R. Bradley, car accountant.

L for loaded.
X for empty.

Car No.	Delivered to.	L or X.	Destination.
35454	Wiggins.		Ferry.
45996	Wiggins.		Ferry.
30700	Wiggins.		Ferry.
129 35364	Wiggins.		Ferry.
9676	Wiggins.		Ferry.
16562	Eads.		Bridge.
31872	Eads.		Bridge.
2100	Eads.		Bridge.

EXHIBIT "F."

Cars Damaged and Burnt by Fire at East St. Louis.

SPRINGFIELD, ILLS., *Nov.* 2, 1894.

Mr. W. E. Beacham, C. A., C., M. & St. P., Chicago, Ill.

DEAR SIR: In response to attached telegram please find statement showing C., M. & St. P. cars which were damaged by fire or burned at East St. Louis, October 26th.

Yours truly,

W. R. BRADLEY,
Car Accountant.

Enclosure # 3.

Telegram.

CHICAGO, ILLS., *Nov.* 1, 1894.

W. R. Bradley, J. S. E. line:

Have you received any report of the numbers of our cars destroyed by fire in East St. Louis recently.

W. E. BEACHAM.

EXHIBIT F.

Cars Damaged by Fire at East St. Louis Oct. 28, 1894.

C., M. & St. P. No. 44562.
" " 47654.
" " 46648.
" " 15254.
" " 5906.

M. & N. 178.
C., M. & St. P. 7286.
" " 17868.
" " 45964.
" " 31950.
" " 7552.
" " 4268.
" " 16802.
" " 36088.
" " 30290.
" " 43264.
" " 12.

130 *Cars Burned at East St. Louis Oct. 28th, 1894.*

M. & N. No. 1232.
C., M. & St. P. 10536.
" " 3218.
" " 34908.
" " 17272.
" " 16502.
" " 46064.
" " 43222.
" " 15944.
" " 32986.
" " (12).
" " 1100.
" " 31098.
" " 31204.
" " 46992.
" " 34574.
" " 2430.
" " 32194.
" " 33134.
" " 4126.
" " 37506.
" " 38108.
" " 12336.
" " 3728.
" " 18126.
" " 6842.
" " 10720.
" " 43080.
" " 20022.
" " 2598.
" " 6364.
" " 12886.
" " 33090.
" " 11836.
" " 680.
M. & N. 1154.
C., M. & St. P. 3524.

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/2 189 4

Report of M + N *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵀ

Car No.	Delivered to	L or X	Destination.
896	Eads		Bridge
		X	

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/ 189 4

Report of C M + St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵀ

Car No.	Delivered to	L or X	Destination.
18234	R I & P		P
47622	C R I & P		P
21366	Eads		Bridge.
34148	"		"
15748	"		"
48076	"		"
8486	St L, Wag		Aug 23
32402	"		"
38476	"		"
32320	"		"
46092	"		"
13372	"		"
7466	"		"
12892	"		"
31748	"		"
35214	"		"
10766	Wag		Ferry

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/ 189 4

Report of C M + St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵀ

Car No.	Delivered to	L or X	Destination.
32674	Eads		Bridge
46582	"		"
21818	"		"
6660	Coup 12		Ref "
8296	"		" X

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/6 189 4

Report of C M + St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵀ

Car No.	Delivered to	L or X	Destination.
42654	Eads		Bridge
42194	"		"
19904	"		"
1102	"		"
11764	"		"
17090	mo P W & B		C Road E & M
4118	"		"
35434	"		"
1304	"		" X

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/20 1894

Report of C M & St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵗ

Car No.	Delivered to	L or X	Destination
12306	Wag.		Ferry
14584	573	"	"
11912	573	"	"
14702	Wag	" 573	"
36536	E 573	"	"
35714	573	"	"
45442	Eads		Bridge
15132	Rip Crip		573
19736	"	"	" X
46386	"	"	" X
3504	"	"	" X

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/13 1894

Report of C M & St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵗ

Car No.	Delivered to	L or X	Destination
33194	Eads		Bridge X
3524	"	"	"
2948	"	"	"
32328	"	"	"
7022	"	"	"
15546	"	"	"

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/22 1894

Report of C M & St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵗ

Car No.	Delivered to	L or X	Destination
14444	Wag		Ferry
43262	"	"	"
6318	C.B.I. UC		C & A Crip 573
39130	"	"	"
36938	Eads		Bridge
15370	"	"	" X
19052	"	"	"
18492	Merchants		Bridge

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/24 1894

Report of C M & St P *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Car Accᵗ

Car No.	Delivered to	L or X	Destination
44872	Wiggins		Ferry
3160	"		"
39272	"		"
38530	Eads		Bridge
13234	"		"
3050	"		"
35312	"		"
37546	"		"
1242	"		"
46698	Crip		C B M &
43816	"		"
19614	"		X
39570	"		"
19922	"		"
38276	a 1-07		J & L Wag
	Crip		573

FORM 84. 11-96-10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/10 189 4

Report of C M & St P Cars delivered to our connections.

L for Loaded. X for Empty. W. R. BRADLEY, Car Acc't

Car No.	Delivered to	L or X	Destination.
46720	C. J. & St		
14	Wag		Jerrey
40336	"		"
37202	"		"
15292	"		"
21640	"		"
34782	"		"
46216	"		"
34998	"		"
33508	"		"
35900	"		"
6754	"		"
20350	Eads		Bridge
14046	"		"
9634	"		"
21676	"		" X

FORM 84. 11-96-10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/9 1894

Report of C M & St P Cars delivered to our connections.

L for Loaded. X for Empty. W. R. BRADLEY, Car Acc't

Car No.	Delivered to	L or X	Destination.
11622	Wag		Jerrey
19978	Brmgs		Pkg 273
14996	"		"
12274	"		"
7686	"		"
19664	"		"
7218	"		"
5324	"		"
31026	"		"
30932	"		"
31054	"		"
14391	Eads		Bridge X
7160	"		"
13344	"		"

FORM 84. 11-96-10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/17 1894

Report of C M & St P Cars delivered to our connections.

L for Loaded. X for Empty. W. R. BRADLEY, Car Acc't

Car No.	Delivered to	L or X	Destination.
20656	Eads		Bridge
35286	"		"
10508	"		"
40446	"		"
13762	"		" X
8968	"		"
2406	"		"
44084	"		"
4030	"		"
8992	Wag		Jerrey
21398	"		"
16962	"		"
3882	"		"

FORM 84. 11-96-10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/10 1894

Report of C M & St P Cars delivered to our connections.

L for Loaded. X for Empty. W. R. BRADLEY, Car Acc't

Car No.	Delivered to	L or X	Destination.
7302	Eads		Bridge X
36444	"		" X
670	"		" X
11502	Wag		Jerrey
13164	"		"

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 189 .

Report of . *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Can Acc't.

Car No.	Delivered to	L or E	Destination.
5702	Eads		Bridge
12042			"
1686	~~Pm + Rck Isl~~		~~" "~~
4950	"		"
8702	"		"
6358	"		"
9920	"		"
43348	"		X
18816	"		"
1938	"		"
12986	"		"
35588	"		"
9468	"		"

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/24 189 4

Report of Cm rct 9 *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Can Acc't.

Car No.	Delivered to	L or E	Destination.
48250	Merchants		Bridge
13672	Wig		Ferry
35556	"		"
21216	"		"
6156	"		"
15704	"		"
14400	"		"
38948	"		"
33484	"		"
35522	73 Crp		Rip
38236	"		"
28816	Eads		Bridge
43262	Crp		Rip X
14998			

Sms
Eads B 73

FORM 84. 11-96 10m.—Journal.

CHICAGO, PEORIA & ST. LOUIS R. R.

Springfield, Ill., 10/23 189 4

Report of Cm rct 9 . *Cars delivered to our connections.*

L for Loaded. X for Empty. W. R. BRADLEY, Can Acc't.

Car No.	Delivered to	L or E	Destination.
48224	Eads		Bridge
13924	Rip + Crp		X
8936	"		" X
39340	"		"
31414	"		"
36532	Wig		Ferry
44368	"		"
36700	"		"

135 EXHIBIT "H."

Letter of W. H. Hemphill to J. N. Barr.

JACKSONVILLE, ILLS., *Nov.* 15, 1894.

Mr. J. N. Barr, sup't M. P., C., M. & St. P. R'y, West Milwaukee.

DEAR SIR: Attached please find list of C., M. & St. P. cars destroyed in fire at East St. Louis, October 28th. Will you please send me a memorandum giving the age, dimensions and value of the cars according to M. C. B. rules. I desire the value of the body and truck separately, as we may decide to rebuild trucks and return them to you. Also would like to have the weight of wrought iron and cast iron separately in the body of the car, also in the trucks, exclusive of wheels and axles. This information will save us a great deal of work in getting the amount of salvage. Will advise later concerning bill.

Yours truly,

W. J. HEMPHILL,
Sup't M. P. & M.

EXHIBIT "I."

List of Cars Destroyed in E. St. Louis.

C., M. & St. P. cars destroyed in fire at East St. Louis.

Milwaukee & Northern		1232
Milwaukee & Northern		1154
C., M. & St. P.		46064
	"	43222
Union Line.		10071
C., M. & St. P.		10536
	"	3218
	"	34908
	"	17272
	"	16502
	"	15944
	"	32986
	"	12
	"	1100
	"	31098
	"	31204
	"	46992
	"	34574
	"	2430
	"	32194
	"	33134
	"	4129
136 C., M. & St. P.		37506
	"	38108

C., M. & St. P.	12336
"	3728
"	18126
"	6842
"	10720
"	43080
"	20022
"	2598
"	6364
"	12886
"	33090
"	11836
"	680
"	3524

EXHIBIT "K."

Letter of J. N. Barr to W. J. Hemphill.

WEST MILWAUKEE, *November* 19, 1894.

W. J. Hemphill, Esq., S. M. P. & M., J. S. E. line, Jacksonville, Ill.

DEAR SIR: I have your favor of the 15th in response to mine of November 7th, regarding 38 cars destroyed in fire at East St. Louis October 28th. I send you herewith statement showing the capacity, date built, and age of each car, with depreciated value for body and trucks, also car complete. Will you please advise me at your earliest convenience whether we shall render bill for both body and trucks of these cars. I am anxious to dispose of the matter promptly, and wish you would favor me with an early reply. At the same time advise what disposition will be made of the cars shown as damaged on the list sent you November 7th.

As requested I enclose statement showing amount of cast and wrought iron, springs and brasses, body and trucks separate, for our 28, 30, 40 and 60 thousand pound capacity cars.

Yours truly,

J. N. BARR,
Sup't Motive Power.

Copy.

137 *Statement of Cars Destroyed on J. S. Line in Fire at E. St. Louis Oct.* 28, 1894.

Statement of cars destroyed on Jacksonville Southeastern line in fire at East St. Louis October 28, 1894.

Numb'r.	L'gth.	Cap'y.	Built.	Age.	Depreciated.		Value cars.	Remarks.
					Body.	Trucks.		
12.....	28'	30,000	Aug., '71	.....	80.00	96.00	176.00	
680.....	28'	30,000	.....	Aug., '71	80.00	96.00	176.00	
1100.....	25'	30,000	.....	Aug., '71	80.00	96.00	176.00	
2431.....	28'	28,000	Aug., '79	15-2	80.00	96.00	176.00	
2598.....	28'	30,000	.....	Aug., '71	80.00	96.00	176.00	
3218.....	28'	28,000	.....	Aug., '79	80.00	96.00	176.00	
3524.....	28'	30,000	.....	Aug., '71	80.00	96.00	176.00	
3728.....	28'	30,000	.....	Aug., '71	80.00	96.00	176.00	
4126.....	28'	28,000	.....	Aug., '71	80.00	96.00	176.00	
6364.....	28'	30,000	Oct., '77	17-	80.00	96.00	176.00	
6842.....	28'	30,000	Sept., '79	15-1	80.00	96.00	176.00	
16536.....	28'	28,000	May, '80	14-5	82.00	98.40	180.40	
10720.....	28'	28,000	May, '80	14-5	82.00	98 40	180.40	
11836.....	28'	30,000	Sept., '80	14-1	83.68	100.42	184 10	
12336.....	28'	28,000	7, '80	14-3	82.84	99.41	182.25	
12886.....	28'	30,000	Oct., '80	14-	84.10	100.93	185.03	
15044.....	33'	40,000	Nov., '80	13-11	84.55	101.46	186 01	
16502.....	28'	30,000	Nov., '80	13-11	84 55	101.46	186.01	
17272.....	33'	40,000	June, '81	13-4	87.68	120.58	208.26	
18126.....	33'	40,000	June, '81	13-4	87.68	120.58	208 26	
24022.....	33'	40,000	Apr., '81	13-6	86 79	159.34	246.13	Air brake.
31098.....	33'	40,000	Aug., '83	11-2	100.25	137.85	238.10	
31201.....	33'	40,000	Sept., '83	11-1	100.75	178.55	279.30	Air brake.
32194.....	33'	40,000	Oct., '83	11-	101 26	139.24	240.50	
32986.....	33'	40,000	Oct., '83	11-	101.26	137.24	240.50	
33090.....	33'	40,000	Mar., '86	8-7	117 64	161.78	279.42	
33134.....	33'	40,000	Mar., '86	8-7	117.64	161.78	279.42	
34574.....	33'	40,000	Apr., '86	8-6	118.25	162.61	280 86	
34908.....	33'	40,000	May, '86	8-5	118.86	163.45	282.31	
37506.....	33'	40,000	Mar., '88	6-7	133.14	183 08	316.22	
38104.....	33'	40,000	7, '28	12-3	93 75	168.93	262.68	Air brake.
43 80.....	33'	60,000	Oct., '90	4-	156.15	274.22	430 37	Air brakes.
43222.....	33'	60,0 0	Oct., '90	4-	156.15	274 32	430.27	Air brakes.
46092.....	33'	60,000	7, '91	3-3	163.63	285 43	449 06	Air brakes.
1154.....	34'	50,000	Oct., '88	6-	137.97	206.97	344.94	(Lettered M. & N.)
1232.....	34'	50,000	Oct., '88	6-	137.97	206 97	344.94	" " "
10071.....	28'	28,000	Mar., '80	14-7	81.15	97.40	178.55	
46064.....	33'	60,000	Dec., '90	3-11	157.81	276.72	434.53	Air brake.

138 On Tuesday, September 3, 1895, beginning at 10 o'clock a. m., before Stuart Brown, master in chancery of the United States court for the southern district of Illinois, in the case of The Mercantile Trust Company and others against The Chicago, Peoria and St. Louis railway and others, a consolidated cause in said court pending, and in the matter of the interventions in said cause by the Chicago, Milwaukee and St. Paul railway and others, parties reappeared, the intervenors represented by Burton Hanson and George P. Cary, and the receiver by Bluford Wilson and Philip Barton Warren; when the following further testimony on behalf of intervenors was taken, signatures waived, Volney Hickox acting as stenographer.

Mr. WILSON: I wish the record of appearance to be taken.

Mr. HANSON: On the part of the petitioners or intervenors George P. Cary and Burton Hanson.

Mr. WILSON: On the part of the receiver Bluford Wilson and Philip Barton Warren.

Mr. HANSON: I wish to recall Mr. Beacham.

Mr. WILSON: Now, may it please your honor, I desire to object to the further proceedings in this cause at this time and to add to

the specific objections which I may from time to time offer to the testimony on behalf of petitioners on the hearing the general objections.

1st. That the issues in this cause have not been properly joined.

2d. That the necessary parties who are of record in the original cause have not been made parties to this hearing and have not been formally notified of these proceedings; namely, the St. Louis Terminal Association; and in support of the objection I invite the attention of your honor to the fact that the record of the cause shows that the St. Louis Railroad Terminal Association is a party already in the original foreclosure proceedings, and that a rule has been served upon it to show cause why it should not be joined as a party defendant in these proceedings, and that rule which has been served upon the St. Louis Terminal Association has not yet been disposed of; in further support of the objection, I call the attention of the master to the cross-petition filed on behalf of the receiver, a petition for a rule to show cause and to the rule in the record served upon the St. Louis Terminal Association. And I now move to postpone further proceedings in this matter.

The MASTER: When was your cross-petition filed?

Mr. WARREN: On the thirteenth of May, 1895.

Mr. WILSON: And the order of the court issued thereon on the fourth of June, 1895.

139 The MASTER: The motion is overruled.

Mr. WARREN: We except to the master's ruling.

Mr. HANSON: I wish to ask leave to file a replication to the receiver's answer.

The MASTER: I don't think I ought to pass on the pleadings; that will have to go to the court.

Mr. HANSON: In reply to Mr. Wilson I will state that this hearing is under a stipulation that the hearing should go on; I wish to make proof of that and will ask Major Wilson to be sworn; I don't want this to go into the record as if there were no notice; I have a telegram from Major Wilson on the subject. I will ask it to be noted, however, first, that petitioners ask leave to make and file their replication to the receiver's answer, and since the master refers the matter to the court, the attorneys for the receiver are now notified that leave will be asked from the court to file a replication as of the proper term, if such replication be necessary.

Mr. WILSON: As to the stipulation it is right; I should call the attention of your honor to the fact that Mr. Warren in giving his consent had in mind only the appearance of the receiver, in the matter, and did not undertake either directly or indirectly in any way to consent to the waiving of notice to necessary parties in this cause. It is not our appearance that we are questioning, but we are objecting to the further conduct of these proceedings, in view of the fact that the record does not show any notice to the St. Louis Railroad Terminal Association or any appearance for them; I will add to the record that upon the former hearing I observed the presence of Mr. Watts, the general counsel for the St. Louis Terminal Railroad Association, and also the presence of Mr. Samuel P.

Wheeler of this city, who was, as I understood, at the time in the same interest. The parties are not present at this meeting. And I did what I could then by challenging the record to call the attention of the court to the fact that the St. Louis Railroad Terminal Association should be fully identified and become responsible, so far as the presence of counsel could make them responsible, as to the further order of the proceedings. That the record shows.

The MASTER: I don't understand that you made any mention of Mr. Wheeler.

Mr. WILSON: I thought I did; I observed him.

Mr. HANSON: I understand Mr. Wheeler represents other intervenors and was simply present as other people who were sitting around the room.

The MASTER: I have overruled the motion, and I think the proceedings should go on.

Mr. WILSON: I desire to add this further statement in reply
140 to the suggestions of Mr. Hanson, the opposing counsel. The consent now of record by the receiver was, of course, upon the theory that all necessary parties should be present, and that the proceedings would be conducted in the orderly method of such proceedings, on due notice to the necessary parties, and especially parties of record, and subject to all objections whatever that the receiver might be able to fairly make to the regularity.

Mr. HANSON: I wish myself to be sworn, if there is going to be any objection.

Mr. WILSON: The same objection, of course, goes to Mr. Hanson's statement as to any other of the proceedings.

Testimony of Mr. Hanson.

Mr. HANSON, sworn:

About a week before the 27th day of August, I wired Major Wilson, asking him to fix a time for taking testimony in these proceedings; he wired back, fixing Tuesday, August 27th, as the day for taking the testimony. I replied, I would be ready to go on with the testimony that day, and accordingly, I got here on Tuesday, the 27th of August, and proceedings were had as shown by the master's report, to be continued today.

Cross-examination by Mr. WILSON:

Q. I will ask you to look at this letter and state whether that is your signature, and whether you wrote that letter or not (exhibiting).

A. Yes, sir.

Q. I desire to offer the letter of Mr. Hanson in connection with his testimony (letter marked Exhibit One).

(Objection by Mr. Hanson to the letter as having no relevancy whatever to this testimony.)

Q. Did you write that, also (exhibiting another paper)?
A. Yes, sir.
Q. I offer that, also.

(Objection by Mr. Hanson, on the same ground, that neither letter has any relevancy to the stipulation made for the conduct of this testimony.)
(Marked Exhibit Two.)
The MASTER: They are admitted subject to objection.
(Exception to their admission by counsel for intervenors.)
Mr. HANSON: I now ask that Mr. Beacham be recalled.

141 *Testimony of W. E. Beacham.*

Mr. BEACHAM recalled.

Direct by Mr. HANSON:

Q. Are you familiar with the custom among different railroads in the United States as to exchanging cars between the different companies in the transportation of freight and the return of those cars to the company owning them?
A. Yes, sir.
Q. You may state what the custom is in reference to the exchange of cars, receiving the cars of one company by another, when consigned to points off the line, and the return of those cars when taken to their destination and unloaded.
A. The practice is to return them through the channel whence they came.
Q. Give an illustration; take any shipment, in this case, for instance, from La Crosse to St. Louis by way of East St. Louis.
A. You may take, if you please, a car loaded at La Crosse, Wisconsin, belonging to the Chicago, Milwaukee and St. Paul railway, billed to St. Louis——
Q. By way of East St. Louis?
A. By way of East St. Louis. It would be taken by us and delivered to the Rock Island and Peoria railroad at Rock Island; they would take it to Peoria, and would deliver it through the Peoria and Pekin Union railroad, which is a switching association, to the Chicago, Peoria and St. Louis railway, and they in turn would deliver it to the St. Louis Railroad Terminal Association, to reach its final destination at St. Louis. After the car was made empty it would in the ordinary course of business be returned through the same channel to us.
Q. So the Terminal Association would return it to the Chicago, Peoria and St. Louis, and they would return it through its connection back to the St. Paul Company?
A. Yes, sir.
Q. Take these shipments in question, transporting barley from points in Iowa, Wisconsin and so forth, by the way of East St. Louis to St. Louis, consigned by way of East St. Louis; would that go through in the same car, if loaded at any of those points?
A. Yes, sir.

Q. That is, there would not be an unloading of the barley?
A. No, sir, no transfer.
Q. The barley would go through in the same car to its destination?
A. Yes, sir.
142 Q. That was the practice and custom?
A. Yes, sir.
Q. Are you acquainted with the practice and custom which prevailed among the different railroads of the United States in respect to the settlement or payment for cars damaged or destroyed when in possession of companies not owning the cars?
A. Yes, sir.
Q. You may state what the practice or custom is.
A. The practice is for the company, through its master car-builder, for the company on whose track the car is destroyed, to report such destruction to the owner of the car and to call for a history of the car, showing when it was built, and then they deduct a depreciation and salvage and settle direct with the owners of the car, if they so elect. But they may — it is optional with them to rebuild the car.
Q. So the company in whose possession the foreign car is, in case that car is damaged or destroyed, either rebuild the car or pay the company owning it?
A. That is the universal practice.
Q. Is that the way all settlements are made between different companies with respect to damaged and destroyed cars?
A. Yes, sir; it is.
Q. So that a car of the Chicago, Milwaukee and St. Paul Railroad Company, while in the possession of the Chicago, Peoria and St. Louis Railway Company, if damaged or destroyed, the latter company would pay the St. Paul Company for it, or rebuild the car?
A. Yes, sir.
Q. You say that is the custom and practice on which all settlements are made between different companies?
A. Uniform practice and custom.
Q. Take these cars in question which were consigned from points in Iowa, Minnesota and Wisconsin to St. Louis by way of East St. Louis, over the Chicago, Peoria and St. Louis railway, what would the Chicago, Peoria and St. Louis Company have in its possession showing that those cars were consigned to be delivered at St. Louis?
A. They would have a regular waybill which would follow the car through, made at the point of shipment.

Mr. WILSON: I am afraid you will find some difficulty in finding more than one of these cars billed to St. Louis.

Q. I will call your attention to the S. Y. Hyde Elevator Company; it appears that he has a receipt given by the Chicago, Milwaukee and St. Paul railroad to the S. Y. Hyde Elevator Company under date of September 9, 1894, for C., M. & St. P. car
143 No. 680. That is consigned to the Teichman Commission Company, St. Louis, Missouri, by way of East St. Louis. What do you call that paper I have shown you?

A. That is a receipt from our company to the shipper.
Q. Receipt or bill of lading?
A. Yes, sir.
Q. Now, that is a receipt given to the owner of the consignment, isn't it?
A. Yes, sir.
Q. Now, upon that bill of lading there is a waybill?

Mr. WILSON: I suppose you propose to put that in evidence?

Q. Yes, sir; upon that there is a waybill, made out by the St. Paul Company, is there, to accompany that car?
A. Yes, sir.
Q. I will now show you another paper, which is in red ink, called waybill of freight forwarded, and so forth? What do you call that?
A. Call that the regular waybill.
Q. Made out by the Chicago, Milwaukee and St. Paul Company?
A. At Wykoff, Minnesota.
Q. To accompany this car of barley?
A. Yes, sir.
Q. Did that go into the possession of the Chicago, Peoria and St. Louis railway?
A. I assume it did.
Q. Now, I offer this waybill and this receipt or bill of lading in evidence. (Marked Exhibit "L.")
Q. I want also to offer papers on the other cars. Those yellow papers are our waybills, are they?
A. Yes, sir.
Q. Accompanying the other cars?
A. Yes, sir.
Q. I understand all these go into evidence under the stipulation?

Mr. WILSON: I shall put them in evidence at the proper time if you don't.
Mr. WARREN: They were to go in under the stipulation.
(Marked successively "M" to "S.")

Q. Now, take this car, six eighty, which you have just testified about, in respect to both bill of lading and waybill; when that car reached East St. Louis to be sent over, what would be done by the C., P. & St. L. at that point, with reference to any further waybill, in the regular course of business?
A. My understanding of it would be they retained the original waybill and issued another.

144 (Objection.—To understanding.)

Q. If you don't know, I will withdraw the question and answer. I can prove it by another witness.
Mr. WARREN: Which car was that he testified about?
Q. Car sixty-eight, from Wykoff.

Cross-examination by Mr. WILSON:

Q. Taking this car, number sixty-eight, about which you have been questioned, I will ask you upon which of these papers the C., P. & St. L., or the Jacksonville and Southeastern railway, would handle the car at East St. Louis or at the destination?

A. Car six eighty would be handled upon this paper, which is a waybill.

Q. Now I will ask you to look at that waybill and name the point of delivery and the destination; the point of receipt and destination of that car, reading from the waybill itself?

A. This is a waybill reading from Wykoff, Minnesota, to East St. Louis.

Q. Then this is the paper, is it, upon which the Chicago, Peoria and St. Louis would handle the car?

A. Yes, sir.

Redirect by Mr. HANSON:

Q. Also in this paper, under the head of consignee, is Teichman & Co., St. Louis, Missouri?

A. Yes, sir.

Q. Is it upon this information the Chicago, Peoria and St. Louis would rewaybill that car at its destination?

A. Yes, sir.

Mr. WILSON: If you know?

Cross-examination by Mr. WILSON:

Q. Did you ever work around East St. Louis?

A. No, sir.

Q. Ever handle any cars there?

A. No, sir.

Q. Did you have any direct personal contact with the method of handling cars billed as in this waybill from a certain point north to East St. Louis?

A. Not any direct contact.

Q. You said something about the transfer of these cars through Peoria; what company makes the transfer through Peoria?

145 A. The Peoria and Pekin Union.

Q. Do you know what relation that company holds to the Chicago, Peoria and St. Louis, the P., D. & E., and other railroads terminating in Peoria or at Pekin?

A. They are tenant lines of that railroad.

Q. Do you know who owns the Peoria and Pekin Union railway?

A. No, sir.

Q. Do you know whether it is owned by a lot of the companies that use it in Peoria in common?

A. No, sir; I don't.

Q. Suppose these cars had been lost while on the tracks of the Peoria and Pekin railroad, who would have been responsible?

A. I should say the Peoria and Pekin Union railroad would be.

Testimony of George W. Phelps.

Mr. PHELPS recalled.

Direct by Mr. HANSON:

Q. Are you familiar——

Mr. WILSON: All and further taking of this testimony is under the objection I have made.

Q. Are you familiar with the custom prevailing between the different railroads of the United States, with reference to the exchange and return of freight cars?

A. Yes, sir.

Q. You may state what that custom and practice is—what it was at East St. Louis.

A. The custom is to return empty cars to the line receiving them.

Q. Give an illustration—cars in this controversy to St. Louis by way of East St. Louis.

A. Cars delivered to us for St. Louis delivery, we would deliver them at the places instructed by the way-bill, and on the car being made empty, return them to East St. Louis, to the line upon which they came.

Q. If you received them from the C., P. & St. L., you returned them to that line?

A. Yes, sir.

Q. What further would be done with them?

A. They would return the car, loaded or empty, to the line from whom they received it.

Q. Until the car got back home?

A. Yes, sir.

146 Q. Take this car testified to by Mr. Beacham, C., M. & St. P., car 680; it seems there was a bill of lading given at Wykoff station, Minnesota, and also a waybill made out for the car; now what information would the *the* C., P. & St. L. have at East St. Louis of the consignee or destination of that car?

A. The destination would be shown by the waybill, and the consignee would be the bill of lading that would show.

Q. What is there on that waybill which shows consignee and destination?

A. Body of the waybill—under the column consignee and destination shows Teichman Commission Company of St. Louis.

Q. Would this waybill come into possession of the Chicago, Peoria and St. Louis agent at East St. Louis?

A. That is a copy; original waybill accompanies the car and undoubtedly came into his possession.

Q. There would be a copy, then?

A. That is undoubtedly a copy.

Q. That would be in the possession of the agent of the C., P. & St. L.?

A. Yes, sir; in the regular course of business.

Q. With the waybill what would the agent do with reference to sending the car on—when it was sent on what would he make out?

A. He would rewaybill it to us.

Q. Have you a blank waybill such as he would issue in sending that car to Teichman in St. Louis?

A. Yes, sir; I have a blank railroad Terminal Association form.

Q. Will you produce one of those forms? (Marked Exhibit "T.") This blank form which the reporter has just marked—are those blanks marked as shown?

A. Yes, sir; we furnish all the connecting lines a supply of those blank forms.

Q. When this car, six eighty, reached East St. Louis and got ready to be sent over, what would the agent of the C., P. & St. L. at East St. Louis do in respect to the form?

A. Fill in that form, showing the necessary information in regard to properly forwarding the car.

Q. Then what would he do?

A. Deliver that waybill to us.

Q. Then what would you do with the car?

A. Forward the car as instructed in the waybill.

Q. Had any of these waybills been delivered to you in respect to any of the cars in controversy prior to or at the time of the fire?

147 A. No, sir.

Q. Fill that out so as to cover this car sixty-eight, as it would be filled out and delivered by the agent to you—I mean by the agent or any clerk of his.

Mr. WILSON: Practically an object-lesson you are giving us.

Q. Yes, sir.

(Objection.)

Q. (The form having been filled out by the witness as directed.) I now offer this in evidence as being in the same form as offered before, but filled up. (To witness:) Now, have you a waybill which has been made out by the C., P. & St. L. at East St. Louis of a car actually received and sent to the destination, Teichman, at St. Louis?

Mr. WILSON: Does the question pertain to any of these cars in controversy?

Q. No, sir.

(Objection.)

The MASTER: I can't say whether it is admissible or not; I will receive it under objection.

(Paper marked Exhibit "U.")

Q. I now offer another waybill similar to that, which can be marked. (Exhibit "V.")

(Objection.—Same objection.)

Q. I will call attention to the figures fifty-two ten; what is that?

A. Charges due the line which has transported the car to East St. Louis.

Q. That is, the charges from the starting point to East St. Louis or St. Louis?

A. In that case to St. Louis.

Q. Now, under that I see you have figures in blue lead-pencil, four fifty-nine, under the head of transfer; what does that indicate?

A. That is the transfer charges for taking the car from East St. Louis to the delivery point at St. Louis.

Q. Who paid those?

A. In that case the C., P. & St. L.

Q. The C., P. & St. L. paid the four fifty-nine?

A. Yes, sir.

Q. You would collect the fifty-two ten there as advance charges?

A. Yes, sir.

Q. Do you understand why the C., P. & St. L. paid your charges for taking that car from East St. Louis to St. Louis? State, if you know.

148 Mr. WILSON: He knows.

A. The freight was from competitive territory, and to equalize the rates competing lines are forced to pay the bridge charge.

Q. That is, if a line of road competed in this territory from which lines entered St. Louis on the west side of the river it paid the charges over to St. Louis?

A. Yes, sir.

Q. The C., P. & St. L., to compete for this freight to be carried over its line, agreed to take care of the bridge charges from East St. Louis to St. Louis?

A. That is the custom.

Cross-examination by Mr. WILSON:

Q. Referring to this car, six eighty, again, and to the waybill, at what point did the Terminal Company take possession of that car?

A. I don't know that we took possession of it at all; don't say we did.

Q. Well, in any of these bills you have introduced, at what point would the Terminal Company take possession of the cars?

A. At East St. Louis.

Q. Whereabouts?

A. On the tracks assigned in the terminal yard to the C., P. & St. L.

Q. You have given us an object-lesson here in the shape of a separate waybill on a form of the Terminal Railroad Association. I will ask you, assuming that car six eighty had been destined for actual delivery in St. Louis, where the Railroad Terminal Association would have taken it in possession?

A. At East St. Louis.

Q. Whereabouts?

A. On the tracks assigned to the receiver of the C., P. & St. L. tracks, shown on the blue print in evidence, marked red.

Q. From whose possession?

A. The C., P. & St. L. or the receiver.

Q. Do you wish to state with reference to that car and the other cars about which you have been examined, and for which you have

said you received no separate waybill, whether those cars were destined to St. Louis?

A. Knew nothing of the destination at all; never received any waybill, and knew nothing of the contents or destination.

Q. I will ask you whether in point of fact there are not many cars waybilled precisely as car six eighty was that never go to St. Louis at all?

149 A. Never go there?

Q. Yes, sir; that are unloaded at East St. Louis or disposed of in some other manner at the option of the consignee?

A. That might be.

Q. I will ask you whether it is a fact?

A. I can't say.

Q. What is your best impression?

A. I don't know, to tell the truth; know nothing about the way these local offices handle their business; when we get the waybill of a car we know what to do.

Q. I will ask you if all the cars the C., P. & St. L. bring into the "Y" tracks of the Terminal Association at St. Louis billed as those were billed——

Mr. HANSEN: What?

Q. Six eighty and the other cars of the C., M. & St. P. go in point of fact to St. Louis?

A. Don't go unless billed to St. Louis.

Q. Then do you mean that the cars billed as six eighty was from Wykoff to East St. Louis, and down below marked to Teichman go to St. Louis?

A. No; there are cases where the consignees gave instructions to send them to other points.

Q. Then the waybill you referred to covering six eighty is not at all conclusive on the question as to whether the car is to go to St. Louis or not?

A. It is until we get later orders from the consignee.

Q. It goes, unless the consignee tells it to go somewhere else?

A. Man that produces the bill instructs us to send it somewhere else; we do.

Q. You recognize the final disposition of the car as depending on the will of the consignee at East St. Louis or St. Louis?

A. Not altogether.

Q. To what extent?

A. That is rather a difficult question to answer.

Q. Well, answer it the best you can; to what extent are the cars that are billed, as car six eighty was, controlled as to their destination by the waybill, in every case or in some cases?

A. In probably ninety-nine out of a hundred the cars would go as billed; the other one would be sent where the consignee desired, paying the delivery charges.

Q. Then, you say, in ninety-nine cases out of a hundred the waybill would be conclusive as to the destination?

A. It is conclusive when given to us, in all cases; if the car is

stopped by the consignee after the delivery of the waybill, that is another case.

150 Q. Don't you know, if these cars had not been burned, a large number of them would never have gone to St. Louis in the course of business?

A. Might and might not.

Q. I will ask you to look at this object-lesson of yours, this form, and tell the master whether Teichman and Company indicated any particular point at St. Louis where the car should be transported?

A. In this particular case, no.

Q. How would you be directed, then, as to the ultimate destination of this car on this form you have filled out?

A. It is not billed that way, as a rule.

Q. I understood that you were giving us an object-lesson.

Mr. HANSON: Add to that.

(Witness takes the bill and writes an addition to the filling up.)

Q. What addition have you made?

A. Sixteenth street, Union depot; that would indicate.

Q. As you made it out originally, and seemed to be perfectly satisfied, it didn't indicate any particular point at which the car was to be delivered?

A. No, sir.

Q. Now, I will ask you if that addition to this waybill, or form, which you have made did not show conclusively that the original waybill to the C., P. & St. L., covering six eighty, did not show and did not pretend to show what particular point of delivery was intended by the shipper?

A. I couldn't say what the original waybill showed; it was not in our possession.

Q. You had a copy of it; why couldn't you speak from it?

A. This one? That simply shows St. Louis mark of its destination

Mr. HANSON: From which you made it out?

A. Yes, sir.

Q. I will ask you whether, in point of fact, that waybill does not, also, show the initial point at Wykoff, Minnesota, and terminal point at East St. Louis?

A. The waybill is headed East St. Louis, yes, sir.

Q. What is that for; what does it mean?

A. That waybill?

Q. Yes, sir.

A. Instruction to carry the car to East St. Louis over those lines.

151 Redirect by Mr. HANSON:

Q. When it arrived at East St. Louis what further was done?

A. We would not know anything about it until we got a waybill from the C., P. & St. L.

Q. And you got no such waybill in this case?

A. No, sir.

Q. Nor for any of those cars?
A. No, sir.
Q. Now, you say that if a car should be delivered to the Terminal Association by the receiver, with a waybill accompanying it, you would carry that car according to the waybill, unless the consignee with the special bill of lading demanded otherwise?
A. Yes, sir.
Q. Wouldn't act unless by order of the consignee, accompanied by the original bill of lading?
A. Yes, sir.
Q. The fact that he had the original bill was evidence that it was his property?
A. Yes, sir.
Q. What day of the week was this fire?
A. Sunday night.
Q. October 28th was Sunday?
A. Yes, sir.

Mr. HANSON: I would like to have that affidavit for proof of loss made by Mr. Calvert; I have given notice to produce it.

Mr. WILSON: I decline to produce it.

Mr. HANSON: Then I now offer in evidence a copy of the same, with the exception of the signature of Mr. Calvert and the date of his signature, which was, I understand, the twenty-second of December, 1894.

(Objection to the offer of the copy.)

Mr. WILSON: And I have declined to produce the original, first, because I haven't it in my possession at this time; and second, because I have had no written notice as to the particular paper desired by Mr. Hanson; no sufficient notice.

Mr. HANSON: I will pin the notice which I have given to the paper.

Mr. WILSON: You give it here today, do you?

Mr. HANSON: Yes, sir; I notified you I would give it; notice to the effect, requiring them to produce it, and if they decline, a copy of the original should be given. I now offer a copy of that paper as furnished to me by the receiver.

Mr. WILSON: Your honor observes it is a notice served upon me this morning for the first time.

152 The MASTER: I think I will admit the copy under your objections. (Paper marked Exhibit "W.")

Mr. HANSON: I wish to state that the original bears the signature of Mr. Calvert, and is sworn to before an officer authorized to administer oaths; and I now offer that in evidence.

(Objection.)

Testimony of A. M. Gregory.

Mr. GREGORY recalled.

Direct by Mr. HANSON:

Q. Was the original of this affidavit and statement attached to it, as made by Mr. Calvert presented to the insurance company?

A. It was; I would add to that that this was presented to the insurance companies under their clause allowing sixty days for notice of claims against them.

Q. Presented by the C., P. & St. L. Railroad Company or its receiver?

A. I was instructed by the general counsel to present it.

Q. The general counsel of the receiver?

A. Yes, sir; the claim was rejected by the insurance companies.

Q. I think that is our case.

Mr. WILSON: I want this notice pinned to that paper with the note that it was served on me here.

Mr. HANSON: I find some of the waybills and bills of lading on some of the cars are not here. With that exception I close my case.

Mr. WILSON: Please designate what cars.

Mr. HANSON: I don't think I can.

Mr. WILSON: Please state how soon you will be able to do it.

Mr. HANSON: I will try to do it while here; I have checked nearly all of them, but I see there is a discrepancy as to some.

After testimony presented on behalf of the receiver and motion by his counsel for postponement, on the forenoon of Wednesday, September the fourth, further testimony on behalf of intervenors was offered as follows:

Mr. HANSON: I ask for a subpœna for Mr. Bradley, the car accountant of the C., P. & St. L.

(The subpœna having been served, when the witness arrived he was sworn and testified. But pending his arrival, Mr. Beacham was recalled and re-examined as follows:)

153 *Testimony of W. E. Beacham.*

Mr. BEACHAM recalled.

Direct by Mr. HANSON:

Q. I will call your attention to the list of cars which was furnished to you by W. R. Bradley, the car accountant of the C., P. & St. L., under date of November 2, 1894, which is attached to the testimony taken in this proceeding as Exhibit "F," and ask you if any junction or car reports were made by the receiver or his car accountant of the delivery of those cars or any of them by the receiver to the Terminal Association prior to the fire of October 28, 1894?

A. I have carefully checked that statement which you hold in your hand just referred to, with an eye to verifying it, and this has been done several times since there was a prospect of controversy over this matter, and I can state of my own knowledge that no report has ever been made showing the delivery of any of those cars that were destroyed to the Terminal railroad or to any other railroad.

Q. Does that include the car damaged too?

A. No, sir, that does not include the cars damaged.

Q. Now I will ask with respect to this list.

A. Cars damaged?

Q. No, sir, list of cars in that paper there, whether you checked that over, Exhibit "F," and I ask you with reference to the cars in that exhibit, in that statement furnished by Mr. Bradley to you, whether there was any junction report received of any of those cars?

A. No, sir; none received.

Q. Have you gone over all the cars mentioned and described in these intervening petitions in controversy, I mean the C, M. & St. P. cars, to ascertain whether any reports, such as I have named, had been received by you or made by the car accountant of the receiver, Mr. Bradley?

A. Yes, sir, I have.

Q. Any such reports made or received?

A. No, sir.

Cross-examination by Mr. WILSON:

Q. How do you know no reports were made; because you were present on the ground, or do you predicate your statement on the ground that you didn't receive any?

154 A. My statement is based on the fact that none were received.

Mr. HANSON: Mr. Warren, we have agreed if there was any error in figures, that should be remedied. Will you allow these papers to be put in by way of explanation? I am willing that Mr. Gregory's statement attached should go along. I don't expect to change the amount in the stipulation by that, but I do not wish to be in a situation to allow the owners to say that I have not put that before the master.

Mr. WILSON: I am informed by our claim agent that the difference does not come from clerical error, but from the method or process of reaching the matter; I decline to enlarge or amplify in any way the stipulation already signed and placed on record.

Testimony of W. R. Bradley.

W. R. BRADLEY sworn.

Direct by Mr. HANSON:

Q. You are the car accountant of the receiver in this proceeding?

A. Yes, sir.

Q. And you were so at the time of the fire in East St. Louis in October last, and prior to that time?

A. Yes, sir.

Q. Was it a practice at that point when a car of the Chicago, Milwaukee and St. Paul Company was delivered to the Terminal Association, to make a report of the delivery of that car?

A. Yes, sir, when that delivery was reported to me.

Q. When that delivery was reported you would make the customary report to the Chicago, Milwaukee and St. Paul?

A. Yes, sir.

Q. That was true with reference to any other company whose cars had been delivered?

A. Yes, sir.

Q. There were four C., B. & Q., cars containing barley consigned to Teichman Commission Company, of the following numbers: Ten eight fourteen; eleven nine sixty-two; fourteen three eighty-five, and nineteen nineteen; have you made any report of the delivery of those four cars to the C., B. & Q. prior to the fire?

A. Don't remember.

Q. Will you take these numbers and look the matter up at once; and in addition to the numbers I have given (witness having copied those) I will give you these: St. Louis, Belleville and Southern Illinois car number twenty-nine seventy-five, C., N. O. & P. T., thirty-four thirty-three, three C's and V twelve six eleven; all together seven cars. Please consult your records and look that up.

(In the absence of the witness occurred the following:)

Mr. WILSON: As to the motion for application to his honor, Judge Allen, for leave to file replication, if necessary to be filed, it is agreed that it shall meanwhile be filed with the master, and the hearing of the same postponed to the occasion of the next visit of Messrs. Hanson and Cary to this city, the delay in the meantime to be without any prejudice whatever to either party.

(The witness reappeared and answered as follows:)

A. I do not find that junction cards have been sent showing the delivery of these cars to the lines mentioned.

Cross-examination by Mr. WILSON:

Q. Had you in the meantime, between the twenty-eighth of October and the date when you should have sent out junction notices, been notified that they had been burned by the fire?

A. I learned a few days after that they had been burned—about five days after the fire.

Redirect by Mr. HANSON:

Q. Up to the time of the fire you had made no junction report and had received none from them?

A. No, sir.

Further hearing postponed provisionally to October second.

EXHIBIT "L."

Exhibit L to Testimony, Manifest of Freight Transferred.

Car No. 680. Terminal Railroad Association of St. Louis.
C., M. & St. P. Manifest of freight transferred.
From C., P. & St. L. R. R. To Eads R. R. Oct. 10, 1894.

Consignor.	Consignee & destination.	Description.	Wt.	Charges.
C., M. & St. P. Wykoff.	Teichman Com. Co. 16th St. & Union depot. St. Louis, Mo.	Barley.	30,000.	$51.0

Form 287¼

EXHIBIT M.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

Car No. 32986. SPECIAL WAY-BILL. *Way-Bill No. 379.*

Whose car, St. P. *from La Crosse to East St. Louis, Ill.* *Date 10/12, 1894.*

This form must be used in all cases in billing Flour or Product made from Wheat, billed to be milled "in transit"

Consignor.	Consignee and Destination.	No. of Pkgs.	Description of Articles.	Weight.	Rate.	Local Unpaid.	Adv. Charges.
W. C. Co.	Teichman Com. Co. St. Louis, Mo.		Barley	40400	7	28.28	
			S L			28.28	

Via Rock Island
R. I. and P. & J. S. E. Line.

Paid.

Free a c Transit.
Rate applies to St. Louis, Mo.

Copy.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

SPECIAL WAY-BILL.

Whose Car.....
Car No...... *W.-B. No.*.....
From.....
To.....*189*

CONDUCTORS are positively forbidden to take into their train any loaded car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bill.

The use of Memorandum Way-Bills is positively forbidden.

W. G. COLLINS,
General Superintendent.

Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Departed from.....*Seals*.....
Arrived at.....*Conductor.*
Received at the destined Station,
.....*Agent.*

Form 287¼

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

Car No. 20022. SPECIAL WAY-BILL. *Way-Bill No. 378*

Whose car, S. W. *from La Crosse to East St. Louis, Ill.* *Date 10 12, 1894.*

This form must be used in all cases in billing Flour or Product made from Wheat, billed to be milled "in transit."

Consignor.	Consignee and Destination.	No. of Pkgs.	Description of Articles.	Weight.	Rate.	Local Unpaid.	Adv'd Charges.
W. C. Co.	Teichman Com. Co. St. Louis, Mo.		Barley. S L	41100	7	28.77	
	Via Rock Island R. I. and P. & J. S. E. Line. Free a c Transit Rate applies to St. Louis, Mo.					28.77 Paid.	

Copy.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

SPECIAL WAY-BILL.

Whose Car .....

Car No. ..... *W.-B. No.* .....

From .....

To *189*

CONDUCTORS are positively forbidden to take into their train any loaded car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

W. G. COLLINS,
General Superintendent.

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Departed from ..... *Seals* .....
Arrived at ..... *Seals* ..... *Conductor.*

Received at the destined Station, ... *Agent.*

Form 257½

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

Car No. 1100. **SPECIAL WAY-BILL.** **Way-Bill No. 483.**

Whose car, St. P. **from La Crosse to East St. Louis, Ill.** **Date 10/18, 1894.**

This form must be used in all cases in billing Flour or Product made from Wheat, billed to be milled "in transit."

Consignor.	Consignee and Destination.	No. of Pkgs.	Description of Articles.	Weight.	Rate	Local Unpaid.	Adv. Charges.
W. C. Co.	Teichman Com. Co. St. Louis, Mo.		Barley. S L	30000	7	21.00	
	Via Rock Island R. I. & P. & J. S. E. Line.						21.00
			Free a c Transit. Rate applies to St. Louis, Mo.				Paid.

Copy.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.
SPECIAL WAY-BILL.

Whose Car.....
Car No......*W.-B. No.*.....
From.....
To.....*189*

CONDUCTORS are positively forbidden to take into their train any d car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

W. G. COLLINS,
General Superintendent.

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Departed from.....*Scals*.....
Arrived at.....*Scals*.....*Conductor.*

Received at the destined Station,
.....*Agent.*

Form 287¼

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

Car No. 15254. **SPECIAL WAY-BILL.** ***Way-Bill No. 507.***

Whose car, St. P. from La Crosse to East St. Louis, Ill. Date 10/20, 1894.

This form must be used in all cases in billing Flour or Product made from Wheat, billed to be milled "in transit."

Consignor.	Consignee and Destination.	No. of Pkgs.	Description of Articles.	Weight.	Rate.	Local Unpaid.	Adv. Charges.
W. C. Co.	Teichman Com. Co. St. Louis, Mo.		Barley S L	30400	7	21²⁸	
	Via Rock Island R. I. & P. & J. S. E. Line.						21²⁸
			Free a c Transit.				
	Rate applies to St. Louis, Mo.						Paid.

Copy.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

SPECIAL WAY-BILL.

Whose Car.....

Car No...... *W.-B. No.*.....

From.....

To.....

.....*189*

CONDUCTORS are positively forbidden to take into their train any loaded car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

W. G. COLLINS,
General Superintendent.

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Departed from.....*Seals*.....
Arrived at.....*Seals*.....*Conductor.*

Received at the destined Station,

.....*Agent.*

Form 287.

181
160½

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

SPECIAL GRAIN WAY-BILL.

Car No...... *Way-Bill No.*.....

Whose Car..... *From*..... *to*..... *Date*..... *189*

This form of Way-Bill must in all cases be used in billing grain, to be floured or cleaned "in transit." A separate Way-Bill must be used for each Car.

CONSIGNOR.	CONSIGNEE AND DESTINATION.	ARTICLE.	Weight.		Rate.	Freight Charges.		Advanced Charges		Prepaid.	

Marked Capacity of Car,..... *lbs.* Marked Capacity of Car must always be noted on Way-Bill for Car-load Freight.

Chicago, Milwaukee & St. Paul R'y.

Special Grain Way-Bill.

Whose Car.....

Car No...... *W. B. No.*.....

From.....

To.....

.....*189*....

CONDUCTORS are positively forbidden to take into their Train any loaded Car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

Departed from..... ..... *Seals*..... ....

Arrived at.....*Seals*.....

.....*Conductor No*.....

Departed from..... .... *Seals*..... ....

Arrived at.....*Seals*.....

....*Conductor No*..... .....

Departed from.....*Seals*.....

Arrived at..... .....*Seals*..... ....

.....*Conductor No*..... .....

Departed from.. .....*Seals*..... ...

Arrived at.. .....*Seals* .....

..... *Conductor No*.....

Departed from..... ..... *Seals*.....

Arrived at..... .....*Seals*.....

....*Conductor No*.....

Departed from.....*Seals*.....

Arrived at..... ....*Seals*.....

....*Conductor No*.....

Departed from..... ....*Seals* .. ..

Arrived at.....*Seals*.. .. ..

.....*Conductor No*.....

Received at the Destined Station.....*189*....

Seals..... ....*Agent.*

160 The following are the written insertions made in the C., M. & St. Paul special grain waybill, of which the foregoing is a true blank form, as the same were introduced in evidence and made exhibits:

EXHIBIT "N."

Waybill No. 80.

Chicago, Milwaukee & St. Paul R'y.

M. & N. Car No. 1154. Oct. 11, 1894. Waybill No. 80.

Freight forwarded from Ossian, Iowa, to East St. Louis, Ills., via Rock Island R., I. & P. & J. S. E.

Consignor.	Consignee & destination.	Description.	Rate.	Wt.	Charges.
J. H. De G. c. o. G. & Co. C.	Teichman Com. Co. St. Louis, Mo.	Bulk barley.	13½.	40,000.	$50.00.

Chicago, Milwaukee & St. Paul R'y.

Chicago, Milwaukee & St. Paul R'y.

Car M. & N. No. 38108. 10/13, 1894.

Freight forwarded from Ossian, Iowa, to East St. Louis, Ills., a Via Rock Island R. I. & P. J. S. E.

Consignor.	Consignee & destination.	Description.	Rate.	Wt.	Charges.
J. H. De G.	Teichman Com. Co. St. Louis, Mo.	Bulk barley.	13½.	40,000.	$60.00.

1819

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Station receipts.

Blue print

Chicago, Milwaukee & St. Paul Railway Co.

No.

Shipped by

Consigned to

Articles

189

Agent.

No. Stations 189

RECEIVED from

in apparent good condition

MARKS AND NUMBERS.	DESCRIPTION OF PROPERTY.	WEIGHT.

As described above, contents and value unknown, to be transported by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., over the line of this Railroad to

their warehouse at

subject to the conditions printed on the back hereof, which conditions form a part of this contract, and the acceptance of this contract is a consent to and agreement with all of such conditions, whether this receipt be signed by the consignor or not. The property described in this receipt is received subject to the classifications and tariffs in effect on the date of issue of this receipt, and is subject to change of classification and tariffs between the time of receipt and the time of delivery at destination. The rate applicable to the property described in this receipt is that in effect on the date the property is received at the destination named herein, unless a different rate is specified in writing by the agent at the point of shipment.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Deeds Contracts, evidence of property or other writings, or be responsible for their loss or injury.

2. No Conductor, or other agent of the Corporation, has power to receive in charge of Bank Notes, Money or Securities, or to receive, forward, or deliver the same, except as an accommodation, without extra compensation, and he will not be responsible for the same, or for any such articles.

3. No Gold or Silver Coin or Bullion, or manufactured articles of gold or silver, Watches, Jewelry or Precious Stones, Plated Ware, Clocks, Time Pieces, Glass, Silks, Laces, Furs, Fashionable Wearing Apparel, or Paintings, Statuary, Curiosities, Works of Art or Musical Instruments, will be carried unless specially agreed to in writing, stating the true value thereof, and the Company will not be responsible for articles and their value, and unless the proper extra price for the carriage are paid, nor for such articles beyond the sum of fifty dollars.

4. Carpenter and combustible articles of any description, will be taken only on special terms and rates. If found secreted among other freight, or received, the shipper or consignee will be held responsible for consequence of fire same may occasion.

5. Articles will not be received for transportation unless properly packed in suitable Cases, Boxes, Bales or Packages, and in the manner they are to be delivered, otherwise they will not be considered liable for damage to the same, or for loss or subsequent damage to the contents of packages not properly protected by their coverings. Nor will the Company be responsible for breaking, or which occurs without the negligence or fault of the Company or its agents. All property is subject to stoppage in transit necessary.

Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss or parts of the same, Hoops or other Ends, if not covered with canvas.

No other saw for delivery of Lumber, Hoops or other Ends, if not covered with canvas will be made.

6. The Corporation will not be responsible for damage to property by fire, whether from, during accidents or unavoidable causes, or by theft or injury to property by thieves, or by the violence of mobs or other persons, nor for any loss or damage to property by fire, while in their freight depot or other destination will not be liable for the non-delivery of such property in any certain time, nor in time nor for any particular train.

The charges on letter-of-notice must always be prepaid.

The charges on perishable property must always be prepaid.

7. The Corporation will not be responsible for damage to property by the perils of the sea, nor in transit or shipment, however occasioned, but they will forward the same with all reasonable dispatch as the general business of the Corporation will permit.

8. The Corporation will not be responsible for loss of, after the property has been placed in its depot or upon its platform, or for damage to property by fire, while in their freight depot or elsewhere, the Company will not be liable.

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will be responsible for loss or injury happening to or occasioned to live stock in the transportation thereof, over the railroads to the same, nothing, nor for any damage, however occasioned, to any animals or any description, transported or carried on cars owned or controlled by the Company.

11. The Corporation will not be responsible for loss or damage to any article in live or otherwise, unless the value thereof is stated in writing.

12. Goods or property consigned to any place of the Company's line of road or to any point or place where the terminal will be sent forward with as little delay as practicable, but the Company will not be responsible for any loss or damage which may arise from unavoidable delay in forwarding the same unconditionally, for transportation, the Company acting for the time only as carriers. The Corporation will not be responsible for any loss, damage or injury to property after the same shall have arrived at the station mentioned herein, and notice thereof given to the consignee or his agent, and a reasonable time for its removal shall have elapsed, but the Company shall have a lien upon all freight and baggage to secure the payment of storage.

13. No local freight shall be subject to a minimum charge or tracking and would of 40 per car for each 24 hours detention or fraction thereof after the expiration of 48 hours from the arrival at destination, and after such notice of the arrival of the same has been given to the consignee, and the Consignee or Consignee shall pay the C. M. & St. P. Ry Company the expense of drayage and warehousing, and other charges, and the Company shall have a lien upon the freight in addition to its own freight charges and tack charges.

Chicago, Milwaukee & St. Paul R'y.

Special Grain Way-Bill.

Whose Car .....

Car No. ..... *W. B. No.* .....

From .....

To .....

..... *189* ....

CONDUCTORS are positively forbidden to take into their Train any loaded Car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

Departed from..... *Seals*..... ....

Arrived at .....*Seals*.....

.....*Conductor No*.....

162 The following are the written insertions made in the C., M. & St. P. station receipts, of which the foregoing is a true blank form, as the same were introduced in evidence and made exhibits.

Station Receipt.

OSSIAN, IOWA, 10/11, 1894.

Received from J. H. De Graff c. o. G. & Co.
Teichman Commission Co.
St. Louis, Mo.

Via East St. Louis		Bulk barley	80,000	
St. P. 1154		50,000		833/16
17868		50,000		833/16

To warehouse St. Louis, Mo.

W. S. CODY, *Ag't.*

OSSIAN, IOWA, 10/10, 1894.

Received from J. H. De Graff c. o. G. & Co.
Teichman Com. Co.

St. Louis, Mo.			Bulk barley	160,000	
Via East St. Louis					
St. P.	35168	cap.	40,000	833/16	
"	44562		660,000	833/16	
"	38108		40,000	833/16	
"	30290		40,000	833/16	
					3,333/16

To warehouse St. Louis, Mo.

W. F. CODY, *Agent.*

The following are the written insertions made in the special waybill, of which the foregoing is a true blank form as the same were introduced in evidence and made exhibits:

EXHIBIT "O." *Waybill.*

Chicago, Milwaukee & St. Paul R'y
Via Rock Island R. I. & P. and J. S. E.
Car # 6842.
St. P.
From McGregor to East St. Louis, Oct. 22, 1894.
McM. Teichman Com. Co.
St. Louis, Mo. Barley 30,270 7 $21.19
Rate applies to St. Louis.

163 Chicago, Milwaukee & St. Paul R'y.
Car #10720
St. P. From McGregor to East St. Louis, Oct. 22, 1894.
McM. Teichman Com. Co.
St. Louis, Mo.
Barley 28,000 7 $19.60.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y
Via Rock Island, R. I. & P. & J. S. E.
Car #18126
St. P. From McGregor to East St. Louis, Oct. 19, 1894.

McM. Teichman Com. Co.
St. Louis, Mo.
Barley 35,280 7 $24.70.
Rate applies to St. Louis.

Chicago, Milwaukee and St. Paul R'y
Via Rk. Island, R. I. & P. and J. S. E.
Car # 3728.
St. P. From McGregor to East St. Louis, Oct. 19, 1894.
McM. Teichman Com. Co.
St. Louis, Mo.
Barley 30,020 7 $21.01.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y
Via Rock Island, R. I. & P. and J. S. E.
Car # 4126.
St. P. From McGregor to East St. Louis, Oct. 16, 1894.
McM. Teichman Com. Co.
St. Louis, Mo.
Barley 28,100 7 $19.68.
Rate applies to St. Louis.

Chicago, Milwaukee and St. Paul R'y
Via Rock Island, R. I. & P. and J. S. E.
Car # 2598.
St. P. From McGregor to East St. Louis, Oct. 16, 1894.
McM. Teichman Com. Co.
St. Louis.
Barley 30,150 7 $21.11.
Rate applies to St. Louis.

164 Chicago, Milwaukee & St. Paul R'y
Via Rock Island, R. I. & P. and J. S. E.
Car # 12336.
St. P. From McGregor to East St. Louis, Oct. 16, 1894.
McM. Teichman Com. Co.
St. Louis, Mo.
Barley 28,180 7 $19.73.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y
Via Rock Island, R. I. & P. and J. S. E.
Car # 37506.
St. P. From McGregor to East St. Louis, Oct. 16, 1894.
McM. Teichman Com. Co.
St. Louis.
Barley 34,440 7 $24.11.
Rate applies to St. Louis.

McGregor, Iowa, *Oct.* 22, 1894.

Received from T. McMichael & Son.
Bulk barley.
Car # 6842 St. P. 30,270 lbs.
Teichman Com. Co., St. Louis. C. F. SPAULDING.

Freight prepaid.
Account cleaned in transit.

1822

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Station receipt.

Chicago, Milwaukee & St. Paul Railway Co.

No.

Shipped by

Consigned to

Articles

189

Agent.

No. Stations 189

RECEIVED from

in apparent good condition

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY.	WEIGHT.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Deeds Contracts, evidences of property or other writings, or be responsible for their loss or injury.

2. No Conductor, or other agent of the Corporation, is authorized to make charges of Bank Notes, Money or other valuable papers or things delivered to him for safekeeping, or to receive any package or article not entered on the Company's way-bill, or for such articles.

3. No Gold or Silver Coin or Bullion, or manufactured articles of gold and silver, or Jewelry Watches, Pictures, Plated Articles, Statuary, Musical Instruments, Glass, Silks, Laces, will be carried by the Company unless specially contracted for in writing, and the value and character and kind of such articles be plainly expressed in a memorandum to be signed by the shipper, stating the character and kind of articles and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid or secured.

4. Corporation will not be responsible for any loss or damage to Cotton, Woolen, Linen, Hemp, Flax, Manufactures of the same, Hardware, Cutlery, Stoves and Castings, Marble, Looking Glasses, Window Glass, Paints, Oils, Liquids, put up in glass or earthenware, Cabinet Ware and Furniture still less, be taken at the owner's risk of these articles unless specially agreed to the contrary.

5. Corrosive and combustible articles of any description will be taken only on special terms and at the owner's risk of damage in consequence of the same being so stowed, the shipper or consignee will be required to release the Corporation from all claims for damage.

6. Articles will not be received for transportation unless properly packed in suitable Cases Boxes, Barrels or Packages, and each is marked, or well and clearly labeled with the name of the Consignee, or the articles will not be considered as properly packed, and the Company will in no case be responsible for loss, injury or damages which might have been avoided if this rule had been complied with. All property is subject to stoppage in transit unless otherwise ordered by the party or his agents. All property is subject to examination at such reasonable time, and in the presence of the non-delivery of such property in any certain time, nor in the case for any particular market.

Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

The charges on hollowed marble in sections to be prepaid.

The charges on perishable property must always be prepaid.

7. The Corporation will not undertake or agree to carry property for any particular train, nor in time for any special market, nor to make any connection with any other train or boat, but will use due diligence so far as depends, however, upon itself, that they will forward the same with all reasonable dispatch in the general business of the Corporation will permit it.

8. The Corporation will only be liable as warehousemen, after the property has been placed in their depot, and for a reasonable time to be allowed to the party for him to have removed the same, but the Company will not be liable.

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by wrecks or accidents, or delays or detentions, or by the stoppage of the trains by any cause whatever, or in unloading the same, nor for any damages however caused to live stock or animals of any description, transported or carried upon their railway or in their cars or vehicles.

11. The Corporation will not be responsible for the loss of property by fire, while in their freight depot or warehouse, the Company will be responsible for such property by fire, while in their freight depot or warehouse, the Company will not be liable.

12. Goods or property consigned to any place of the Company's line of road, or to any point or place beyond its terminal, will be sent forward with as reasonable dispatch as the general business of the Corporation, at its warehouse within mentioned, will permit, but the Company reserve the right to forward the same intermediately, the transportation, the Company acting as the agents of delivery to such carrier or freight-man, as the agents of the consignee of consignor, and not as carriers, and the same shall have arrived at the within-mentioned Company's station for delivery to the consignee, consignee or to the connecting carriers or freight-men for transportation.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions, nor shall such agent or clerk have authority to make any contract in relation to the transportation of property, nor shall such agent or clerk be allowed more than six hours after the expiration of 48 hours from the arrival at destination, and after the expiration of 72 hours, the Company shall be authority to sell the property or so much thereof as may be sufficient to pay the charges for transportation, storage and handling and the Consignee or Consignor shall pay the C. M. & St. P. Ry Company the expense of such sale, and warehousing same, and for such purpose the Company shall have a lien upon the freight in addition to its own freight charges and back charges.

The following are the written insertions made in the station receipts of which the foregoing is a true blank form, as the same were introduced in evidence and made exhibits.

166 McGREGOR, IOWA, *Oct.* 22, 1894.

Received from T. McMichael & Son,
Bulk barley.

Teichman Commission Co.
St. Louis, Mo. Car #10720 St. P. 28,000
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING.

McGREGOR, IOWA, *Oct.* 19, 1894.

Received from T. McMichael & Son,
Bulk barley.

Teichman Commission Co.
St. Louis, Mo. Car #18126 St. P. 35,280
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING.

McGREGOR, IOWA, *Oct.* 19, 1894.

Received from T. McMichael & Son,
Bulk barley.

Teichman Com. Co.
St. Louis, Mo. Car #3278 St. P. 30,020
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING.

McGREGOR, IOWA, *Oct.* 16, 1894.

Received from T. McMichael & Son,
Bulk barley.

Teichman Com. Co.
St. Louis, Mo. Car #4126 St. P. 28,110
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING, *Agent.*

McGREGOR, IOWA, *Oct.* 16, 1894.

Received from T. McMichael & Son,
Bulk barley.

Teichman Commission Co.
St. Louis, Mo. Car #2598 St. P. 30,150
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING, *Agent.*

167 McGREGOR, IOWA, *Oct.* 16, 1894.

Received from T. McMichael & Son,
Bulk barley.

Teichman Commission Co.
St. Louis, Mo. Car #12336 St. P. 28,180
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING, *Agent.*

McGregor, Iowa, *Oct.* 16, 1894.

Received from T. McMichael & Son,
Bulk barley.
Teichman Commission Co.
St. Louis, Mo. Car # 37506 St. P. 24,440
Freight prepaid.
Account cleaned in transit.

C. F. SPAULDING.

Exhibit "P."

Waybill No. 307.

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 11836 Sept. 24, 1894 W. B. # 307
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
From H. E. Co. to Teichman Commission Co.
St. Louis, Mo. Barley 31900 7 $22.33. Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 33090 Sept. 24, 1894. W. B. # 306.
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
From H. E. Co. to Teichman Commission Co.
St. Louis, Mo. Barley 41400 7 $28.98. Paid.
Rate applies to St. Louis.

Prairie du Chien, Wis., *Sept.* 24, 1894.

Teichman Com. Co., C., M. & St. P. # 33090 41,400. Barley # 2
St. Louis, Mo. " " " " " # 11836 31,900. Barley # 2
East St. Louis.

J. B. BRANUM, *Weighmaster.*

168 Prairie du Chien, *Sept.* 24, 1894.

Received from Hunting Elevator Co.
Teichman Commission Co. Car # 33090 Barley W. B. 306 41,400
St. Louis, Mo. Car # 11836 Barley W. B. 307 31,900
Via East St. Louis.

A. D. PHILLIPS, *Agent.*

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 16802 Oct. 20, 1894. W. B. # 424.
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
To Teichman Com. Co.
St. Louis, Mo. Barley 31,900 7 $22.33. Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 46648 Oct. 20, 1894. W. B. # 421.
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
Teichman Com. Co.
St. Louis, Mo. Barley 40,400 7 $28.28. Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 7286 Oct. 20, 1894. W. B. # 420.
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
Teichman Com. Co.
St. Louis, Mo. Barley 31,550 7 $22.08. Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 178 Oct. 20, 1894. W. B. # 419.
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
Teichman Com. Co.
St. Louis, Mo. Barley 40,700 7 $28.49. Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car mil. # 12 Oct. 12, 1894. W. B. # 266.
Freight forwarded from Prairie du Chien to East St. Louis, Ills.
Teichman Com. Co.
St. Louis, Mo. Barley 30,700 7 $21.49. Paid.
Rate applies to St. Louis.

169 PRAIRIE DU CHIEN, WIS., *Oct.* 12, 1894.

Teichman Com. Co. C., M. & St. P. #12 30,700 Barley #3
St. Louis, Mo.
Via East St. Louis.

J. B. BRANUM,
Weighmaster.

PRAIRIE DU CHIEN, WIS., *Oct.* 20, 1894.

Teichman Com. Co.	M. & N.	#178	40,700	Barley	#3
St. Louis, Mo.	C., M. & St. P.	#7286	31,550	Barley	#3
East St. Louis.	C., M. & St. P.	#16802	31,900	Barley	#3
	C., M. & St. P.	#46648	40,400	Barley	#3

J. B. BRANUM,
Weighmaster.

PRAIRIE DU CHIEN, *Oct.* 12, 1894.

Received from Huntting Elevator Co.
Teichman Com. Co. Car # 12 Barley 30,700
St. Louis, Mo.
Via East St. Louis.

W. B. 266.
A. D. PHILLIPS, *Agent.*

PRAIRIE DU CHIEN, *Oct.* 20, 1894.

Received from Huntting Elevator Co.

Teichman Com. Co.	Car # 178	M. & N.	Barley	W. B.	419	40,700
St. Louis, Mo.	# 7286	C., M. & St. P.	Barley	W. B.	420	31,550
	#16802	C., M. & St. P.	Barley	W. B.	424	31,900
Via East St. Louis.	#46648	C., M. & St. P.	Barley	W. B.	421	40,400

A. D. PHILLIPS, *Agent.*

EXHIBIT "Q."

Waybill.

Chicago, Milwaukee & St. Paul R'y.
Car C., M. & St. P. #680. Oct. 1, 1894.
Rock Island via R. I. & P., Jacksonville S. E. line.
Freight forwarded from Wykoff, Minn., to East St. Louis.
Teichman Commission Co.
St. Louis, Mo.

Bulk barley. 30,000 $51.00

WYKOFF, *Sept.* 29, 1894.

Received from S. Y. Hyde Elevator Co.
Teichman Com. Co. C., M. & St. P. Car #680
St. Louis, Mo. Bulk barley.
Via East St. Louis.

J. N. SOLBERG, *Agent.*

170 LA CROSSE, WIS., *Oct.* 16, 1894.

Received from S. Y. Hyde Elevator Co. 5 cars barley.

Teichman Com. Co.,	St. L., B. & S. I.,	#20975	40,000#
St. Louis, Mo.,	C., B. & Q.,	#10814	30,000#
	C., B. & Q.,	#1919	30,000#
Via East St. Louis,	C., B. & Q.,	#11962	30,000#
	C., B. & Q.,	#14385	30,000#

J. C. HEITBAHN, *Agent.*

The following are the written insertions made in C., M. & St. P. waybills, of which the foregoing is a true blank form, as the same were introduced in evidence and made exhibits:

Chicago, Milwaukee & St. Paul R'y. W. B. #453.

Car St. L., B. & S. I. From La Crosse to East St. Louis.

10/16, 1894.

Teichman Com. Co.,
St. Louis, Mo. Barley, 40,000# 7 $28.00. Prepaid.
Via Rock Island.
R. I., P. & J. S. E.
Rate applies to St. Louis, Mo.

Chicago, Milwaukee & St. Paul R'y.

Car #10814. W. B. #455.
C., B. & Q. From La Crosse to East St. Louis. Oct. 16, 1894.
Teichman Com. Co.,
St. Louis, Mo. Barley, 30,000# 7 $21.00. Prepaid.
Via Rock Island.
R. I., P. and J. S. E.
Rate applies to St. Louis, Mo.

Form 267¼.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY.

Car No...... SPECIAL WAY-BILL. *Way-Bill No.*.....

Whose Car.....*from*.....*to*.....*Date*.....*189*

This form must be used in all cases in billing Flour or Product made from Wheat billed to be milled "in transit."

Consignor.	Consignee and Destination.	No. of Pkgs.	Description of Articles.	Weight.	Rate.	Local Unpaid.	Adv. Charges.

Car #1
C., B. &
Teichm
St. L
Via Ro

171

Form 287.

Car No.

Whose C

Mc

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY.

SPECIAL WAY-BILL.

Whose Car .....

Car No. ..... *W.-B. No.* .....

From .....

To .....

..... *189*....

CONDUCTORS are positively forbidden to take into their Train any loaded Car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

W. G. COLLINS,
General Superintendent.

Departed from..... *Seals*..... ....

Arrived at .....*Seals*.....

....*Conductor.*

Departed from..... ..... *Seals*..... ....

Arrived at.....*Seals*.....

..... *Conductor.*

Departed from.....*Seals*.....

Arrived at..... ....*Seals*..... ....

....*Conductor.*

Departed from..... *Seals*..... ...

Arrived at.. .....*Seals*.....

....*Conductor.*

Departed from..... *Seals*.....

Arrived at.....*Seals*.....

.....*Conductor.*

Departed from.....*Seals*.....

Arrived at..... ....*Seals*.....

....*Conductor.*

Departed from..... .....*Seals* .. ..

Arrived at.....*Seals*.. .....

....*Conductor.*

Departed from ....*Seals*.....

Arrived at .. ..*Seals*.....

....*Conductor.*

Received at the destined Station.... ....

....*Agent.*

Chicago, Milwaukee & St. Paul R'y.
Car # 1919. W. B. # 456.
C., B. & Q. From La Crosse to East St. Louis. 10/16/1894.
Teichman Com. Co.
St. Louis, Mo. Barley, 30,000 # 7 $21.00. Prepaid.
Via Rock Island, R. I., P. & J. S. E.
Rate applies to St. Louis, Mo.

171 Chicago, Milwaukee & St. Paul R'y.
Car # 11962
C., B. & Q. W. B. # 457
from La Crosse to East St. Louis.
Teichman Com./Co.
St. Louis, Mo. Barley 3,000 # 7 $21.00 Prepaid.
Via Rock Island
R. I. P. & J. S. E.
Rate applies to St. Louis, Mo.

Chicago, Milwaukee & St. Paul R'y.
Car # 14385 W. B. # 458
C., B. & Q. From La Crosse to East St. Louis, Ill. 10/16, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 30,000 # 7 $21.00 Prepaid.
Via Rock Island
R. I. P. and J. S. E.
Rate applies to St. Louis, Mo.

The following are the written insertions made in C., M. & St. P. waybills, of which the foregoing is a true blank form as the same were introduced in evidence and made exhibits:

EXHIBIT "R."

Waybill No. 56.

Chicago, Milwaukee & St. Paul R'y.

Car C., M. & St. P. # 46064 Oct. 11, 1894. W. B. # 38
Freight forwarded from Wykoff, Minn., to St. Louis.
From Jacob Rau Via Rock Island R. I. P. & J. S. E.
To Wm. D. Orthwein Grain Co.
Bulk barley 60,000 # $93

Chicago, Milwaukee & St. Paul R'y.

Car C., M. & St. P. # 43222 10/16, 1894. W. B. # 56
Via Rock Island R. I. P. and J. S. E.
Freight forwarded from Wykoff, Minn., to East St. Louis.
From Jacob Rau
To Orthwein Grain Co.
Bulk barley 40,000 # $62.00

Exhibit R.
Way-bill No. 56.

Chicago, Milwaukee & St. Paul Railway Co.

No.

Shipped by

Consigned to

Articles

189

Agent

No. Stations 189

RECEIVED from

in apparent good condition

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY	WEIGHT

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Deeds Contracts, evidences of property, or other agent of the Corporation, is authorized to take charge of Bank Notes, Money or other valuable papers or things, for, or on account of any person whatever, or to receive any perquisites or reward for so doing.

2. No Gold or Silver Bullion or manufactured articles of gold and silver, or Jewelry, Watches, Precious Articles, Statuary, Musical Instruments, Glass, Silks, Laces, will be carried by the Corporation, for the loss of which it will not be responsible, unless specially entered upon the face hereof, and a rate per cent. in addition to the regular rate for the carriage of such articles shall be paid.

3. Carriers and Freight Cars, Machinery, Stores and Outfittings, Marble, Looking Glasses, Window Glass, Sash and Blinds, Oil Cloths put up in glass or earthenware, Cabinet Ware and Furniture will only be taken at the owner's risk of fracture or injury from the inherent nature of the article, and the loading and unloading thereof, unless otherwise agreed to in writing.

4. Carpenter and common tools or other goods will be taken only at special terms and at owner's risk of damage in consequence of the same being so accepted, the shipper or consignee will be held liable.

5. Articles will not be received for transportation unless properly packed in suitable Cases Bales or Packages, and each must be well and clearly Marked with the name of the Consignee, and of the station where they are to be delivered, and the Company will in receipt for, in which for loss, injury or damage which might have been avoided by a little more careful and sufficient packing, or which occurs without the negligence or fault of the Company or its agents. All goods to be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

6. Articles will not be received for transportation unless properly packed in suitable Cases Bales or Packages, and each must be well and clearly Marked with the name of the Consignee, and of the station where they are to be delivered, and the Company will in receipt for, in which for loss, injury or damage which might have been avoided by a little more careful and sufficient packing, or which occurs without the negligence or fault of the Company or its agents. All goods to be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of Lemons, Oranges or other fruit, if not covered with canvas will be made.

7. The Corporation will not be responsible for shrinkage or deficiency in weight of Grain Seeds or other articles, or for any damage to fruit, fish, dressed, or dressed poultry accidents of inherent property, or from injury to property produced by frost, heat or the elements, and when the Corporation will not be liable for the non-delivery of such property in any certain time, but in the case of Mineral marble must always be prepaid.

The charges on perishable property must always be prepaid.

The Corporation will not undertake or agree to carry property by any particular train, nor in time for any particular market, nor are they to be responsible for time of delivery, nor for any delay or deviation from the usual time of transportation, unless the same is made with an express stipulation to that effect, by the General Superintendent of the Corporation will permit.

8. The Corporation will only be liable as warehouseman, after the property has been placed in their freight depot. But for loss or damage to property by fire, while in their freight depot or elsewhere, the Company will not be liable.

The charges for storage of property not taken from the warehouse within twenty-four hours after notice, will be charged for all property not taken from the warehouse within twenty-four hours after notice.

9. The Corporation will not be responsible for loss or injury, happening to or occasioned by animals of any description, while in the possession of the Company, or while in the act of receiving, or unloading the same or carried upon their railway, or in their cars or vehicles.

10. The Corporation will not be responsible for loss or damage to any article by fire or otherwise, the bulk of which renders it necessary to be forwarded in open cars.

11. The Corporation will not be responsible for any loss, damage or detention of stock, or to any point or place beyond its terminals, in a warehouse within mentioned, will elect, by a carrier or freightman when there are such, known to the station agent at such point, to the purpose of delivery to such same consignee, as the agent of the consignor or consignee and not as carriers. The Company will not be liable or responsible for any loss, damage or detention for delivery to the owner, consignee or to the connecting carriers or freight-men for transportation.

12. Goods or property consigned to any place of the Company's public depots at the point of or place beyond its terminals, in a warehouse within mentioned, will elect, by a carrier or freightman when there are such, known to the station agent at such point, to the purpose of delivery to such same consignee, as the agent of the consignor or consignee and not as carriers. The Company will not be liable or responsible for any loss, damage or detention for delivery to the owner, consignee or to the connecting carriers or freight-men for transportation.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions.

All carload freights shall be subject to a minimum charge for trackage and rental of $5.00 per car for each 24 hours detained after the expiration of 72 hours, this Company shall be at liberty to unload and store the freight in a warehouse of the car or reload and deliver to a warehouseman, and the Consignee or Consignor shall pay expenses this Company shall have a lien upon the freight in addition to its own freight charges and such charges.

The following are the written insertions made in station receipts, of which the foregoing is a true blank form as the same were introduced in evidence and made exhibits:

Chicago, Milwaukee & St. Paul R'y.

Special Grain Way-Bill.

Whose Car.....

Car No...... *W. B. No.*.....

From.....

To.....

.....*189*....

CONDUCTORS are positively forbidden to take into their Train any loaded Car without a regular Way-Bill.

AGENTS at the end of each Division or Destination of Way-Bill will see that names of Conductors and dates of arrivals and departures are endorsed on the Way-Bills.

The use of Memorandum Way-Bills is positively forbidden.

Departed from..... *Seals*..... ....

Arrived at.....*Seals*.....

.....*Conductor No*.....

Departed from..... .... *Seals*.....

173

Oct. 10, 1894.

Received from Jacob Rau
46064
Wm. D. Orthwein Grain Co.
Bulk barley
East St. Louis.

EDW. J. OLSON, *Agent.*

Oct. 16, 1894.

Received from Jacob Rau
43222
Wm. D. Orthwein Grain Co.
Bulk barley
East St. Louis

EDW. J. OLSON, *Agent.*

EXHIBIT "S."

Station Receipts.

LIME SPRINGS, *Oct.* 13, 1894.

Received from M. L. McNally c. o. H. E. Ele. Co.
St. Paul car # 34574
Teichman Com. Co. Bulk barley 40,000 #
St. Louis, Mo.
Via East St. Louis
To be delivered at St. Louis.

E. S. RENSHAW, *Agent.*

LIME SPRINGS, *Oct.* 15, 1894.

Received from M. L. McNally c. o. H. Ele. Co.
St. Paul car # 32194
Teichman Com. Co. Bulk barley 40,000 #
St. Louis, Mo.

E. S. RENSHAW, *Agent.*

LIME SPRINGS, *Oct.* 18, 1894.

Received from M. L. McNally c. o. H. Ele. Co.
St. Paul car # 43080
Teichman Com. Co.
St. Louis, Mo. Bulk barley 40,000 #
Via East St. Louis.
To be delivered at St. Louis.

E. S. RENSHAW, *Agent.*

174 The following are the written insertions made in C., M. & St. P. waybills, of which the foregoing is a true blank form as the same were introduced in evidence and made exhibits;

Chicago, Milwaukee & St. Paul R'y.

Car St. Paul # 43080 10/18, 1894. W. B. # 108.
Rock Island, R. I. & P. R'y.
Freight forwarded from Lime Springs, Iowa, to East St. Louis.
Teichman Com. Co. 40,000 # 145 $48.00
St. Louis, Mo. Bulk barley.
Weight — Coleman.

Chicago, Milwaukee & St. Paul R'y.

Car St. Paul # 32194 Oct. 15, 1894. W. B. # 94.
Via Rock Island and R. I. & P. R'y.
Freight forwarded from Lime Springs, Iowa, to East St. Louis, Ills.
Teichman Com. Co.
St. Louis, Mo. 40,000 # 145 $58.00
Bulk barley.
Weigh — Coleman.

Chicago, Milwaukee & St. Paul R'y.

Car St. Paul # 34574 Oct. 15, 1894 W. B. # 91.
Via Rock Island R. I. & P. R'y.
Freight forwarded from Lime Springs, Iowa, to East St. Louis, Ills.
Teichman Com. Co.
St. Louis, Mo. Bulk barley 40,000 # 145 $58.00
Weigh at Coleman.

175 EXHIBIT "T."

Station Receipt.

Blank form of the Railway Terminal Association. Testimony. Witness Felps.

EXHIBIT "U."

Terminal Railroad Receipt.

Terminal Railroad Association of St. Louis.

46386
C., M. & St. P. From C., P. & St. L. to Eads, Oct. 20, 1894.
Prairie du Chien.
9/20 Teichman Com. Co.
St. Louis. Barley 56,650
16 and Union depot.

EXHIBIT "V."

Terminal Railroad Receipt.

Terminal Railroad Association of St. Louis.

4904
St. P. From C., P. & St. L. to Eads. Oct. 1, 1894.
Red Wing.
9/14 Teichman Com. Co.
16 W. yd. St. Louis. Barley 30,650 # $52/10
A 753 J. S. E. L. Pays.

EXHIBIT "W."

Notice to Receiver to Produce before the Master in Chancery Statements of W. H. Calvert.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant. } Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder and Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Hunting Elevator Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

You are hereby notified to have and to produce upon the hearing in the above-entitled matters before Stuart Brown, master in chancery, a certain affidavit made by W. H. Calvert, as local
176 agent of the C., P. & St. L. Railway Company, at East St. Louis, in the matter of the loss and damage to certain cars and their contents at East St. Louis, during the night of October 28, 1894, together with a statement of such cars and their contents, showing the market value of freight cars, etc., which statement is attached to said affidavit, and that in default of your having produced the original of said affidavit and statement parol testimony will be given of the contents of the same upon this hearing, and the copy thereof produced thereupon.

Yours, &c.,

BURTON HANSON.
GEO. P. CARY.

Sept. 3d, 1895.

To Maj. Bluford Wilson, att'y for the C., P. & St. L. R'y Co., and C. H. Bosworth, its receiver.

Received Sept. 3, 1895.

BLUFORD WILSON.

DECEMBER —, 1894.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, W. H. Calvert, local agent of the Chicago, Peoria and St. Louis Railway Company at East St. Louis, State of Illinois, being duly sworn according to law, depose and say that during the night of Oc-

tober 28, 1894, a fire occurred on the tracks of the Terminal Railway Association Co. at East St. Louis, State of Illinois (said tracks being used by the Chicago, Peoria and St. Louis Railway Company), and burned the cars, and wholly consumed the property freight in transit in said cars, as set forth in statements attached hereto, and forming a part of this proof of loss. Said deponent further deposes and says that the fire originated in freight warehouse of the Terminal Railway Association, and was accidental, and did not originate by any act, design or procurement on the part of the Chicago, Peoria and St. Louis Railway Company, or in consequence of any fraud or evil practice suffered by said railway company, and that every effort was made on the part of the employés of said railway company and others to extinguish the fire and save the property.

DECEMBER —, 1894.

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Before the undersigned authority personally appeared W. H. Calvert, who, being duly sworn, says that the attached statement is a true and correct statement of the damage of property while in transit on the Chicago, Peoria and St. Louis railway on the 28th day of October, 1894.

—— ——.

Subscribed and sworn to before me at my office in ——, this the — day of December, 1894.

—— ——.

177 *Statement of Cars and Their Contents Burned at East St. Louis During the Night of October 28, 1894, and the Market Value of Freight in said Cars at the Time they were Burned.*

Car.	No.	Clm.	Claimant.	Barley.	Bu.	Rate.	Value.	Total.
C., M. & St. P.	12	2962	Huntting Ele. Co	30,700	639.28	54	$355.38	
" "	11838	2963	McGregor, Ia	31,900	664.28	56	372.17	
" "	33090	2963	" "	41,400	862.24	56	483.00	
" "	34574	2964	" "	40,000	833.16	56	466.67	
" "	32194	2964	" "	40,000	833.16	56	466.67	
" "	43080	2964	" "	40,000	833.16	56	466.67	$2,600.56
C., M. & St. P.	680	2970	Hyde Ele. Co	30,555	636.27	56	356.47	
S. T. B. S. I.	20975	2970	La Crosse, Wis	40,000	833.16	55½	462.50	
C., B. & Q.	10814	2970	" "	30,000	625	"	346.88	
C., B. & Q.	1919	2970	" "	30,000	625	"	346.88	
C., B. & Q.	11962	2970	" "	30,000	625	"	346.87	
C., B. & Q.	14385	2970	" "	30,000	625	"	346.87	2,206.47
197								
C., M. & St. P.	6364	2973	Bosch-Ryan	30,000	625	56½	353.13	
C., M. & St. P.	12886	2973	Grain Co	30,050	626.02	56"	353.71	
C., M. & St. P.	2430	2973	Davenport, Ia	30,100	627.04	54"	471.76	
C., M. & St. P.	33134	2973	" "	36,330	756.42	"	412.50	
C., M. & St. P.	46992	2973	" "	50,470	1,051.22	56½	594.07	
C., M. & St. P.	31204	2973	" "	44,380	724.28	"	522.39	
C., M. & St. P.	31098	2973	" "	30,000	625	54"	340.62	
C., M. & St. P.	15944	2973	" "	44,550	926.02	56"	543.55	3,591.72
178 C., M. & St. P.	38108	2965	Gilchrist & Co	40,000	833.16	55"	462.50	
M. & N.	1154	2965	McGregor, Ia.	40,000	833.16	"	462.50	925
C., M. & St. P.	20022	2967	Cargill & Co	41,100	856.12	53½	458.10	
C., M. & St. P.	1100	2967	La Crosse, Wis	30,000	625	"	346.88	
C., M. & St. P.	32986	2967	" "	40,400	841.32	"	450.25	1,255.23
C., M. & St. P.	2598	2966	McMichael & Son	30,150	628.06	58	364.31	
C., M. & St. P.	37506	2966	McGregor, Ia.	34,440	717.24	58	416.15	

Statement of Cars Burned, etc.—Continued.

Car.	No.	Clm.	Claimant.	Barley.	Bu.	Rate.	Value.	Total.
C., M. & St. P.	12336	2966	McGregor, Ia.	28,180	587.04	58	340.51	
C., M. & St. P.	4126	2966	" "	28,110	585.30	58	339.66	
C., M. & St. P.	3728	2966	" "	30,020	625.20	58	362.74	
C., M. & St. P.	18126	2966	" "	35,280	735	58	426.30	
C., M. & St. P.	10720	2966	" "	27,000	583.16	58	338.33	
C., M. & St. P.	6842	2966	" "	30,270	530.30	58	365.76	
C., M. & St. P.	17272	2961	L. Lemke & Co.	40,650	846.42	53	448.84	$2,953.76
C., M. & St. P.	3218	2961	St. Louis, Mo.	29,710	618.46	59	365.19	
C., M. & St. P.	10536	2961	" "	30,480	635	59	374.65	
C., M. & St. P.	34908	2961	" "	41,919	873.15	59	515.26	
U. L.	10071	2961	" "	30,630	638.06	59	376.49	
M. & N.	1232	2961	" "	50,400	1,050	53	556.50	
C., M. & St. P.	16502	2961	" "	32,800	683.16	56	382.60	
B. C., R. & N.	8644	2974	Rothchild Gr'n.	50,070	1,043.06	54½	568.51	3,019.53
B. C., R. & N.	4044	2974	Co. Davenport	31,570	657.34	53"	351.87	
B. C., R. & N.	8910	2974	Iowa	50,000	1,041.32	54"	567.71	
179 C., M. & St. P.	46064	2969	Jacob Rau	62,350	1,298.46	57"	746.80	1,488.09
C., M. & St. P.	43222	2969	Wykoff, Minn.	48,960	1,020	57"	586.50	
C., N. O. & T. P.	3433	2972	Orthwein Gr.	55,200	1,150	56	644	1,333.30
C. C. C. & St. L.	12611	2972	Co. St. Louis	52,600	1,095.40	56	613.66	
St. L. B. S. I.	20983	2987	John Wahl	45,430	946 22	57	539.48	1,257.66
R. I. & P.	577	2987	Coms. Co.	43,890	914.18	57	521.19	
Mo. Pac.	12974	2987	St. Louis, Mo.	42,440	884.08	57	503.98	
								1,561.65
			Total value of barley burned					$22,195.98

Car.	No.	Clm.	Claimant.	Oats.	Bu.	Rate.	Value.	Total.
M. P.	13228	2984	Gratiot St.	37,000	1,156.08	32"	375.78	
C., N. O. & T. P.	518	2984	W. House Co.	35,100	1,096.28	32"	356.48	
H., C. A. & N.	180	2984	St. Louis, Mo.	47,450	1,482.26	32"	481.91	
N. C. & St. L.	893	2984	"	46,000	1,437.16	32"	467.19	
St. L. S. W.	8278	2984	"	32,100	1,003.04	32"	326.02	
St. L. B. S. I.	20487	2984	"	41,700	1,303.04	32"	423.51	
C. & E. I.	3780	2984	"	41,400	1,293.24	32"	420.47	
			Total value of oats burned					$2,851.36

Car.	No.	Clm.	Claimant.	H. coal.	Tons.	Rate.	Value.	Total.
P., F. W. & C.	5560	2968	West. Anth.	63,500	31.150	5.13	162.90	
Pa. R. R.	3974	2968	Coal Co.	60,816	30.816	5.13	156.02	
Pa. R. R.	794	2968	St. Louis, Mo.	60,144	30.144	5.13	154.27	
C. & P.	422	2968	"	60,816	30.816	5.13	156.01	$629.20
W. L.	26372	2985	Donwld. & Co.	28,800	14.800	5.60	80.64	$80.64

Statement of Cars Burned, etc.—Continued.

Car.	No.	Clm.	Claimant.	Barley.	Bu.	Rate.	Value.	Total.
180 U. L.	11893	..... A	Boehmer C. Co.	59,696	29.1696	5.60	167.15	$167.15
C., M. & St. P.	3524 A	.....	A. Cos. & Matl. 4 sets switch-rails credit by 1000 # scrap				30.00 2.68	$27.32
St. L., C. & P.	23258	A	Empty.					
B., P. & E.	704	A	Empty.					
C., P. & St. L.	1092	A	Empty.					
C., P. & St. L.	1953	A	Empty.					
C., P. & St. L.	4199	.....	Empty.					

Merchandise Outbound as per Bills.

C., P. & St. L.	4020	2975	Louis Mfg. Co.				$42.55	
		2976	Hampton & Co.				85.33	
		2977	Hampton & Co.				33.15	
		2978	Waldeck Provi. Co.				237.37	
		2979	Huttig Sash & Door Co.				14.49	
		2980	Baer, Seasongood & Co.				262.41	
		2981	Drew Glass Co.				1.25	
		2982	Smith & Davis Mfg. Co.				12.00	
		2983	Kingman & Co.				50.00	
		2988	Landaner & Sons				1.75	
			Tuxhorn Bros.				28.00	
			C. L. Gray				5.00	773.30
			Total value of freight burned					$26,724.95

181 Statement of cars burned at East St. Louis, Illinois, during the night of October 28, 1894, showing the value of each car, less depreciation for age, the salvage, and the net loss sustained by each car.

Initials.	Numbers.	Value.	Depreciation.	Salvage.	Net loss.
C., M. & St. P	3218	440.00	264.00	60.62	115.38
" "	3524	440.00	264.00	63.25	112.75
" "	4126	440.00	264.00	60.62	115.38
" "	6364	440.00	264.00	63.25	112.75
" "	3728	440.00	264.00	63.25	112.75
" "	6842	440.00	264.00	63.25	112.75
M. & N	1154	500.00	155.06	69.98	274.96
"	1232	500.00	155.06	69.98	274.96
C., M. & St. P	37506	475.00	158.78	69.98	246.24
" "	1100	440.00	264.00	63.25	112.75
" "	2430	440.00	264.00	60.62	115.38
" "	4598	440.00	264.00	63.25	112.75
" "	680	440.00	264.00	63.25	112.75
" "	12	440.00	264.00	63.25	112.75
" "	10536	440.00	259.60	60.62	119.78
" "	10720	440.00	259.60	60.62	119.78
" "	10071	440.00	261.45	60.62	117.93
" "	11836	440.00	255.90	63.25	120.85
" "	12886	440.00	254.97	63.25	121.78
" "	12336	440.00	257.75	60.62	121.63
" "	15944	475.00	274.19	69.98	130.83
" "	16502	440.00	253.99	63.25	122.76
" "	17272	475.00	266.74	69.98	138.28
" "	18126	475.00	266.74	69.98	138.28
" "	20022	515.00	268.86	69.98	176.16
" "	31098	475.00	236.90	69.98	168.12
" "	31204	515.00	235.75	69.98	209.32
" "	32194	475.00	234.50	69.98	170.52
" "	32986	475.00	234.50	69.98	170.52
" "	33090	475.00	195.58	69.98	209.44
" "	33134	475.00	195.58	69.98	209.44
" "	34908	475.00	192.69	69.98	212.33
" "	34574	475 00	194.14	69.98	210.88
" "	38108	475.00	252.32	69.98	192.70
" "	43080	500.00	109.63	85.73	344.64
" "	43222	500.00	109.63	85.73	344.64
" "	46064	500.00	105.47	85 73	348.80
182					
" "	46992	500.00	90.94	85.73	363.33
C., B. & Q	1919	490.00	280.63	65.93	143.44
" "	10814	490.00	294.00	65.93	130.07
" "	11962	490.00	246.87	69.98	173.15
" "	14385	490.00	255.63	69.98	164.39
B., C. R. & N	4044	440.00	244.15	61.85	174.00
" "	8644	500.00	84.70	70.45	384.85
" "	8910	500.00	84.70	70.45	384.85
Mo. Pacific	180	525.00	123.30	77.63	324.07
" "	12974	525.00	176.37	86.78	261.85
" "	13228	525.00	117.17	86.78	321.05
C., C. C. & St. L	26372	440.00	264.00	57.42	118.58
" "	12611	575.00	144.03	76.65	354.32
C. & E. I	3780	475.00	197.03	65.55	212.42
C., N. O. & T. P	518	475.00	147.32	63.27	264.41
" "	3433	575.00	39.91	92.19	482.90
St. L., C. & St. P	23258	500.00	300.	60.94	139.06
N. C. & St. L	893	525.00	48.77	89.63	386.60

Statement of Cars Burned, etc.—Continued.

Initials.	Numbers.	Value.	Depreciation.	Salvage.	Net loss.
St. L. S. W.....	8278	500.00	185.49	60.94	253.57
St. L. B. & S. I.....	20975	500.00	93.02	63.27	343.71
" "	20487	500.00	82.50	63.27	354.23
" "	20983	500.00	93.02	63.27	343.71
R. I. & P.....	577	500.00	213.50	65.51	220.99
Penn. R. R.....	3984	266.62	.....	59.45	207.17

SPRINGFIELD, ILLS., *Aug.* 31, 1895.

Mr. H. S. Rearden, sup't C., P. & St. L. R'y, Springfield, Ills.

DEAR SIR: I beg to acknowledge receipt of your favor of the 30th inst. requesting Conductor Keemer to report to your general claim agent, Mr. A. M. Gregory, Tuesday morning, September 3d at 9 o'clock, for the purpose of making a statement relative to a number of cars destroyed by fire recently in St. Louis.

I have requested our chief dispatcher, Brandenburg, to have Mr. Keemer on hand at the place designated.

Yours truly,

I. W. FOWLER,
Gen'l Sup't.

W.

EXHIBIT "1."

Letter from Burton Hanson to Bluford Wilson.

CHICAGO, *March 22d*, 1895.

Mr. Bluford Wilson, general solicitor C., P. & St. L. R'y, Springfield, Ill.

DEAR SIR: I have your favor of the 21st inst. in reference
183 to the barley claims arising out of the East St. Louis fire, and am much obliged to you for the same. I note what you say in reference to Judge Allen's absence until about the 10th of April. Will you kindly advise me what action has been taken toward bringing in the Terminal Association and making it a party? Has any order or rule been entered upon that company? So long as the matter is to be postponed until about the middle of April, I would like very well, if it could be done, to get that association in court so that the court will have before it all parties who have an interest. Can you bring this about by that time?

Hoping to hear from you, I am,

Yours very truly,

BURTON HANSON,
Ass't Gen. Solicitor.

Answered that judge left so suddenly I had not time to have rule entered.

EXHIBIT "2."

Letter from Burton Hanson to Bluford Wilson.

CHICAGO, ILL., *May* 10, 1895.

Mr. Philip B. Warren, ass't gen. sol'r C., P. & St. L. R'y, Springfield, Ills.

DEAR SIR: I have just had a conference with Major Wilson in reference to the intervening petitions of W. W. Cargill Company and others filed in the receivership proceedings of your company, claiming damages on account of the destruction by fire of a quantity of barley at East St. Louis in October last.

The major requested that I should write you to file petitions in each one of the intervening petitions, including the one of this company, for cars destroyed at once, and have a rule entered requiring the Terminal Railroad Association to show cause a week from Monday next, the 20th, why it should not be made a party defendant to such proceedings.

Judge Allen will be at Springfield on Monday forenoon, the 20th, and will hear the matter. I hope you will give this matter your immediate attention, as all parties are anxious to have these petitions disposed of before the summer vacation. As soon as the Terminal Association is made a party, we can proceed to a hearing at most any time.

Will you please advise me what you have done in this matter.

Yours truly, BURTON HANSON.

184 On Tuesday, September 3d, at ten o'clock a. m., before Stuart Brown, master in chancery of the United States court for the southern district of Illinois, in the consolidated cause of The Mercantile Trust Company and others against The Chicago, Peoria and St. Louis Railway and others, now pending in said court, and in the matter of the interventions in said cause by the Chicago, Milwaukee and St. Paul railway and others, the parties reappeared, the intervenors represented by Messrs. Burton Hanson and George P. Carey and the receiver by Messrs. Bluford Wilson and P. B. Warren, when, after the introduction of some further testimony on behalf of said intervenor (reported elsewhere and including Exhibits One and Two, introduced during a cross-examination by counsel for receiver) testimony was taken and proceedings had on the part of the receiver as follows, signatures waived by consent, Volney Hickox acting as stenographer:

Mr. WILSON: I understand your honor to rule that the hearing shall proceed in spite of the objections and exceptions taken on the part of the receiver.

The MASTER: Yes, sir.

Mr. WILSON: Will you please note that at this stage Mr. Wilson, on behalf of the receivers, objected to the proceedings for the same reasons that were assigned at the opening of this morning's session.

The MASTER: You can add further that it was under compulsion you proceeded.

Mr. WILSON: And under compulsion by the master's ruling.

Testimony of Mark Shawhan.

MARK SHAWHAN, sworn:

Direct by Mr. WILSON:

Q. I wish the record now to show an inquiry by me as to the presence of Mr. J. B. Malone, and I find him absent; (to the witness), Where do you reside?

A. St. Louis.

Q. What business are you engaged in?

A. Railroading.

Q. In the service of what company?

A. Terminal Railroad Association.

Q. That is the Terminal Company that operated the terminal railway at East St. Louis across the Eads bridge and the Merchants' bridge?

A. Yes, sir.

185 Q. Were you in the service of that company on the night of October 28, 1894?

A. Yes, sir.

Q. In what capacity?

A. Yardmaster.

Q. I will ask you to state your exact duties at that time, if you please, and your exact official relation to the Terminal railroad.

A. My duties when I first start in in the evening are to assign the men to work—different parts of the yard—different engines, and throughout the night I am supposed to give orders for whatever is necessary to be done.

Q. Do you have any particular designation as to your official employment there?

A. How is that?

Q. Did you have any particular official designation at that time; were you yardmaster in full or were you assistant or night yardmaster or day yardmaster?

A. I was night yardmaster at that time.

Q. You remember the fire?

A. Distinctly; yes, sir.

Q. About what time did the fire occur?

A. About ten fifty I think, in the evening.

Q. Were you present at that fire?

A. Yes, sir.

Q. What had you been engaged in doing prior to the fire, between the time you went on duty as night yardmaster and the beginning of the fire?

A. I had been directing the men, switching, or whatever I wanted done in certain parts of the yard.

Q. Were you engaged in that employment actively up to the time the fire broke out?

A. I may say the engine was lying idle about fifteen or twenty minutes before the fire broke out.

Q. What engine?

A. Had a crew working at the south end of the yard; Sunday night is supposed to be an easy night; don't do as much work Sunday night as other nights.

Q. Whose engine was this?

A. The Terminal Association's.

Q. In whose charge was it?

A. In my charge you might say.

Q. Were you running the engine?

A. No, sir; I couldn't tell you who the engineer was now.

Q. Remember who the fireman was?

186 A. No, sir.

Q. This engine you refer to was in the south part of the yard?

A. Yes, sir.

Q. About *or* far from the freight-transfer house?

A. I should say about two hundred and fifty yards.

Q. Had you been moving up and down the tracks?

A. Been down on the south side of the house.

Q. Were there any other engines in use?

A. Had two, west bound and east bound, at the stock yards, a quarter of a mile from the fire.

Q. Had they been in?

A. No, sir.

Q. I mean had not been on the tracks going in there?

A. I understand you; no, sir; had not been in there.

Q. How soon after the fire was your attention called to it?

A. I think I seen it about the first one.

Q. In what part of the building?

A. Southeast corner.

Q. What was the building stored with?

A. Hay, I think, mostly.

Q. Was there any other engine in use at that time prior to the fire?

A. No, I say the east-bound and west-bound engines—they were at the extreme—don't know what you might call it—east part of the yard; yard in a kind of triangle; we call it north and south, however, when we go to get anything; stock yards a quarter of a mile away from the fire.

Q. I believe it is a fact that two tracks run through this freight-house?

A. Yes, sir.

Q. Numbers of the tracks?

A. Forty-two and forty-three.

Q. I will ask you to state whether the doors in the freight-house were closed—all apertures.

A. As far as I know, except the ends; no door in the end.

Q. Anything to shut the hay off—contents of the depot from outside exposure?

A. There was on the west and east sides; not on the north and south sides.

Q. What was there in the house besides hay?

A. Nothing but the cars.

Q. Who was using the transfer-house at that time?

A. I couldn't tell you.

Q. Who did the hay belong to?

A. Don't know.

187 Q. Whose cars were in on these two tracks?

A. Chicago, Peoria and St. Louis, I think, mostly, so far as I know.

Q. Who set them there?

A. The Terminal Association.

Cross-examination by Mr. HANSON:

Q. How long had this been used for storing hay prior to the 28th?

A. I can't tell you; I couldn't tell when they commenced to use it for that purpose.

Q. Know it was stored with hay at the time of the fire?

A. Yes, sir.

Q. How near to this warehouse had your engine been that night?

A. Well, it had been right within seventy-five feet of it on the east side; very strong wind from the west side that night.

Q. Had not passed through the freight-house?

A. No, sir.

Q. How frequently would the engine be about this house?

A. Sunday night very seldom.

Q. This the only time you went near it that night?

A. Yes, sir.

Q. How about other nights?

A. Other nights would go in the house and pull cars out.

Q. Go in the warehouse?

A. With enough cars to couple on; wouldn't dare to go in there with the engine.

Q. Do you know what business you were doing in that neighborhood on the night of the fire when you were within seventy-five feet of it?

A. Shifting cars from one track to the other.

Q. Whose cars were they; any of these C., P. & St. L. cars?

A. No, don't think they had hold of any of those on the east side of the house.

Q. Did you go in there that night at any time to handle any of the C., P. & St. L. cars?

A. Made up two trains that night north side of the house.

Q. What time?

A. Nine and a half o'clock I think got through.

Q. Working for the C., P. & St. L.?
A. They were not in the house—the cars.
Q. How near were they?
A. On the west side of the house.
188 Q. How near to it?
A. I couldn't say.
Q. About how near were some of them?
A. That I can't say, either; might have got cars next to the house, north end of it.
Q. That was half past nine?
A. Yes, sir; my orders, when they got through with the train; come right up——
Q. Cars of the C., P. & St. L. mostly stored about this warehouse, weren't they, and on the tracks through the warehouse?
A. Five or six tracks supposed to be.
Q. These cars which were destroyed were by that warehouse?
A. Close to it; some inside and some outside.
Q. Fire at ten thirty?
A. Ten fifty, I think; didn't look at the minute.
Q. When first discovered?
A. Yes, sir.
Q. Other than Sunday nights the switch-engine did quite a deal of switching about the house?
A. Yes, sir; did more other nights than Sunday.
Q. How many engines would be working about the warehouse in the course of the night or day?
A. One each side, you might say.
Q. Made up two trains Sunday night for the C., P. & St. L. and got through at half past nine?
A. Yes, sir.
Q. Week day nights would do more work than Sunday night?
A. Yes, sir.
Q. Engines each side of the warehouse?
A. Yes, sir; kept one engine about there to do all the work for the C., P. & St. L., and our own engine switching on the other side.

Redirect by Mr. WILSON:

Q. If you know, I will ask you to state the origin of this fire.
A. I know nothing about it.

Testimony of David Lester.

DAVID LESTER sworn.

Direct by Mr. WILSON:

Q. Where are you employed?
A. Terminal Railroad Association, St. Louis.
Q. Where do your duties take you; what particular part of St. Louis or East St. Louis?
189 A. East St. Louis is all my work.
Q. What is your position; what are your duties?

A. I have charge of an engine there; foreman of an engine.

Q. In what particular part of East St. Louis did your duties require you to be on the night of October 28, 1894?

A. My work, north part of the yard; doing west-bound work.

Q. Were you employed in the yard of the Terminal Association at East St. Louis on the night of October 28th?

A. Yes, sir.

Q. What engine did you have?

A. Had engine 22, belonging to the Terminal Association.

Q. What time did you go on duty, and what time did you leave?

A. Supposed to go to work at seven o'clock in the evening; quit six in the morning.

Q. What time did you leave there that night, prior to the fire?

A. Didn't leave there at all; there in the morning.

Q. Did you observe the fire when it broke out?

A. Yes, sir.

Q. What time?

A. Had just broke through when I discovered it.

Q. Where were you located?

A. Quarter of a mile from the freight-house, on the west-bound lead.

Q. West of the station?

A. No, east of the freight-house.

Q. In what part of the building did the fire originate, speaking of the points of compass?

A. Well, it was near the southeast corner, I should think, something near that.

Q. What particular duties had you been engaged in that night prior to the fire?

A. Switching cars.

Q. On what tracks?

A. My tracks run but from one to sixteen.

Q. Which side of the depot is that?

A. East side.

Q. Were you west of the depot at all prior to the fire?

A. No, sir.

Q. Did you do all the work done there that night?

A. West-bound.

Q. Did your engine do all the work?

A. No, sir.

Q. What other engines were there on the ground?

190 A. I couldn't give you the number of the engine.

Q. Where——

A. Three crews at work that night.

Q. Where were they?

A. One doing east-bound, and the other doing work in the jack portion of the yard.

Q. What tracks covered by these engines?

A. I can give you east and west bound; they ran from one to thirty-nine.

—. What engine made up the C., P. & St. L. trains?

A. I couldn't tell you; they were Terminal engines, but I couldn't tell what ones.
Q. Which side did they work?
A. At the time of the fire?
Q. Yes, sir.
A. I couldn't say.
Q. Did you have occasion to run your engine into this freight warehouse any time during the day?
A. I didn't.
Q. Know what was stored there?
A. No, sir; I couldn't say exactly; there was hay in there.
Q. There was hay in there?
A. Yes, sir: and coal and barley.
Q. Know whose cars?
A. No, sir.

Cross-examination by Mr. HANSON:

Q. How long had you noticed that hay had been stored there?
A. I couldn't say.
Q. You had noticed it before the fire?
A. Yes, sir.
Q. On more than one occasion had you noticed?
A. I couldn't say; didn't pay much attention.
Q. Working there nights?
A. I was at that time; working days now.
Q. Had you been working days within a month prior to the night of the twenty-eighth?
A. No, sir.

Redirect by Mr. WILSON:

Q. If you know, please state to the master the origin of the fire.
A. I don't.

191 *Testimony of E. R. Stapleton.*

E. R. STAPLETON sworn.

Direct by Mr. WILSON:

Q. I will ask you to state what your employment was on the night of October 28, 1894; in the service of what company?
A. Service of the C., P. & St. L. railway, or of Mr. Bosworth, receiver, directly, in Mr. Calvert's office, the agent, as his chief clerk.
Q. At what point?
A. East St. Louis.
Q. I will ask you if you remember the fire of October 28th.
A. Distantly.
Q. How long after the fire was started was your attention called to it?
A. I was on the ground at the transfer-house within ten or twelve minutes after it originated.

Q. In speaking of the transfer-house, what house do you refer to?
A. The house that was burned.
Q. Whose was it?
A. I couldn't state positively, but it was generally supposed to be the property of the Terminal Association.
Q. In whose use and service?
A. As to that I couldn't say positively of my own knowledge.
Q. What was stored in it?
A. Hay.
Q. I will ask you to tell the master what the condition of the house was, whether closed or open, whether good condition or bad.
A. Having worked there at the time it was used for the transfer station, I was thoroughly familiar with the house. There are two tracks that run through the house, north and south, and there is a door at each end that is high and wide enough to clear the engine and cars on both tracks at the same time. Possibly the doors are twenty feet high and also that wide. They were wide open. Never saw any doors there; then, on the side, both sides of that house, there were doors on the outside, just the same as along the side of a room—they were doors that pulled up and down, and you could throw the whole side of the house wide open, except a little post, a foot wide, between these doors, which were ten feet wide, possibly; that is, not speaking positively as to the width of the doors. These doors would be raised up and down, and they were loose at the sides, to admit of their being easily raised.

192 Q. I will ask you whether the apertures during the night, at the ends and on the east and west sides of this building were so closed as to prevent sparks from the engine from communicating.
A. No, sir; they were not.
Q. How long was this house?
A. Of my own knowledge, I don't know; but I have heard that it was 600 feet.
Q. Judging from your observation, how long would you say?
A. About 600 feet.
Q. In what part of the building seemed to be the place of the fire?
A. Southeast corner.
Q. To what extent had the fire spread when you first saw it?
A. When I first saw it, there was nothing but smoke. I was on my way to the office (?)—and when I looked up I saw nothing but smoke. And was close to it—knew it was in the portion of the yard in which the property of the company was stored, and I very naturally started to run. Don't suppose I ran more than 200 feet before I noticed the flames; and they appeared to go straight through the house like a draft through these wide doors.
Q. Was the wind blowing pretty hard at that time?
A. Wasn't blowing what you would call extremely hard; wind blowing from the west to the east.
Q. How would that strike the building, in respect to its ends or sides; would the wind blow upon the sides, or into the end?

A. Well, you see there were cars on both sides of the freight-house, and the wind blowing sort of diagonally across the house—more that way—the wind, of course, the house being protected by the cars, the wind wouldn't get a fair sweep right there, and would naturally suck through the house.

Q. How far from their freight or transfer house was it to the office of the company, freight office of the company?

A. Possibly a half a mile.

Q. I will ask you what you found at the transfer-house, and what engines, if any, were there, and what was going on when you got to the fire; and I will ask you also, to go on in that connection and state just what you did.

A. As soon as I reached the transfer-house, I started up on the east side, as the fire had started in that part of the house, and there is where it seemed to me the trouble was; and I started up the east side of the house. Of course I was in a great hurry, and I am unable to state positively the names of the men I met, but knew them from observation to be employés of the Terminal Association, switching at the time; and they had a Terminal Association engine.

193 Q. How many?

A. There was one at work at the time, but before I left the east side, another engine came up. I went to the engine closet there on the east side, immediately on getting there. They were occupied in pulling cars further out in the yard, those close to the transfer-house. Went to one of the men engaged with the engine and said, for goodness sake go to the ones closer to the house and pull from there, as there is where the immediate danger is; you can save these afterwards. He wanted to know who I was. I told him; he then told me to go to hell. I went on—saw it was useless to have further conversation with him, and I went up to another engine that had arrived at that time, but could get no satisfaction from them. I then went to the north end of the transfer-house. There were several cars standing just outside the house. By this time there was a great crowd—pushed several cars out by hand, north, after that was done went over on the west side. By that time the whole house was afire. Went over on the left side and Mr. Lester, who testified here, had pulled some cars out of the middle of the tracks west of the house; I seen if we could have an engine there, we could save lots more of that property; there was a car of glucose, and a car of sashes and doors; also a car of canned goods; our Glen Carbon merchandise car. I saw if we could get an engine we could possibly do something there. Saw there was no engine present, as the engine was working the other way, I suppose; I won't say, because I don't know.

Q. Except as you saw it at first?

A. Yes, sir; so I went over where the C., P. & St. L. had an engine on our engine tracks in the immediate vicinity, and said, Can we use that engine? He says Yes, sufficient steam now to start, and by the time I can get out it will be all right. Thought Mr. Keemer, present, conductor, if he could run into the yard we could take the

engine and move a lot of our cars. Started to get that engine out, but before we got it out they had run a cut of cars down on the "Y" and refused to let us out.

Q. Who were "they," and who was it refused to let you out with your engine; whose employés?

A. They were Terminal Association employés.

Q. Did you ask them to let you out?

A. Yes, sir; asked them to clear the way and let the engine out; they said would be more in the way than do good.

Q. Was that true?

A. No, sir.

Mr. HANSON: Positive, are you?

A. Yes, sir; positive. Employed five years there—Mr. Keemer conductor—there running into the yard, competent to pull out a few cars.

194 Q. I will ask you to look at this rough draft or memorandum and state whether or not that indicates the location of the transfer freight-house and the various tracks and the scene of the fire on the night of October 28th?

A. In a rough way, yes, sir,

Q. Who made it?

A. That drawing?

Q. Yes, sir.

A. I did.

Q. You stated you had been five years employed in and about that locality?

A. In and about that locality.

Q. Familiar with the location of tracks in the yard?

A. Yes, sir.

Q. And in reference to the freight-house?

A. Yes, sir; employed in the house for six months.

Q. I will ask you to append that drawing to your testimony; (marked "Exhibit 3"); this plat indicates the points of compass, north, east, west and south, does it?

A. Yes, sir.

Q. I will ask you to refer to this plat and tell the master on which one of these tracks you found the engine of the Terminal Association engaged in switching cars when you first went up.

A. About this track; not positive that track because there may be more tracks.

Q. How indicated?

A. By the red line.

Q. About how many tracks was that distant from the location of the fire?

A. I would judge about ten *blocks*.

Q. Away from the fire?

A. Yes, sir.

Q. I will ask you whether, when you asked the engineer in charge of the Terminal engine——

A. Wasn't the engineer.

Q. I will ask you, when you asked the employé of the Terminal

Association to cease pulling on tracks furthest from the house, if you meant the red line indicated on your plat?

A. Yes, sir.

Q. That was ten tracks away from the location of the fire?

A. About that.

Q. What tracks and what cars did you have reference to when you asked these employés to cease pulling there and work closer to the fire?

A. Tracks indicated by red lines.

195 Q. Next to the fire?

A. Yes, sir; next to the fire; these second and third tracks.

Q. Did the C., P. & St. L have any cars there?

A. Yes, sir.

Q. I will ask you where the bulk of the cars burned that night were located, speaking by your plat?

A. They were located on these tracks—these red lines off the plat, next to the house; in the house and first tracks west of the house.

Q. Of course the two tracks that ran through the house were in the house covered by six hundred feet of shed?

A. Yes, sir.

Q. How close were the tracks just outside, next west?

A. As close as they could be put.

Q. About how close?

A. I should judge three or four feet.

Q. I see you have a red line indicated on the west of your plat; were there any of the C., P. & St. L. located there?

A. Do you mean this dotted line?

Q. Yes, sir.

A. Yes; that was what we call our rib (?) track.

Q. I will ask you where most of the cars of the C., P. & St. L. were burned?

A. On the east (?) side.

Q. That was the side where you asked them to pull away?

A. Yes, sir.

Q. How many cars were burned on the west side of the house, if you can recollect?

A. I am unable to state, but I would judge ten or fifteen.

Q. Were those cars near, or more remote—on the near, or more remote tracks?

A. Near tracks.

Q. Next to the house?

A. Yes, sir.

Q. Look at that plat, if you please, Mr. Stapleton, and locate the C., P. & St. L. engine which you have referred to.

A. Where I have marked the square.

Q. Marked the engine J. S. E.?

A. Yes, sir.

Q. How far was that engine from the fire?

A. About two hundred feet or two hundred and fifty.

Q. Who was in charge of it?

A. The hostler.

Q. What was his name?

A. I don't know; he is the man that handles the engines, gets water.

196 Q. After satisfying yourself that the engine was capable of moving, speaking by the plat, in what direction did you move it?

A. Didn't move it at all, because this track here was blocked, where I write blocked. This was a stub track; this end was not connected and the only way was to go this way, get on the "Y" and get down.

Q. Who closed it?

A. I can't say positive, but it was in the Terminal Association yard and no other engine was there except—I believe the Short Line engine did come up and the Merchants' Bridge engine.

Q. I will ask you under whose control the Merchants' bridge was?

A. Terminal Association.

Q. I will ask you if it is not a fact that the Terminal Association controlled not only the business over the Eads bridge but the Merchants' at the same time.

A. Generally supposed to.

Q. With whom did you communicate with reference to the business of the C., P. & St. L. over the Merchants' bridge, if you know?

A. Mr. J. M. Allison and Mr. Felps.

Q. Who were they?

A. Agents of the Terminal Association,

Q. You may state whether during the progress of the fire, after you got there, you met any Terminal Association employes, and if so, who?

A. A Mr. Lester and Mr. Shawhan.

Q. Anybody else?

A. Nobody I could call by name; several I knew by sight.

Mr. WARREN: Knew them to be employés of the Terminal Association?

A. Yes, sir.

Q. I will ask you if you know or have information from anybody that claimed to know as to the origin of the fire?

A. No, sir.

Q. Did you have any conversation with the Terminal Association people as to the origin of the fire?

A. We were talking—Mr. Shawhan and I were talking after the fire had pretty well died out, standing by Mr. Dunlop's office, or in the immediate vicinity, and I said to Mr. Shawhan, talking about making up number thirty due out there in the morning, the cars so badly scattered, caboose and so forth, talking about getting the train out—commenced talking about the origin of the fire; I asked if he knew what started it; he said he didn't. I said Must have been a spark from the engine; he said, No, didn't think it

197 was, for the engine hadn't been working about there for about thirty minutes.

Q. Did he state it had been working about there?

A. Stated just as I said; didn't think it was that because the engine had been laid up about thirty minutes, or something like that.

Q. What do you know of your own knowledge about the engine being in proximity of the freight-house?

A. Nothing whatever.

Q. Who does know?

A. Mr. Shawhan would be the man to know exactly.

Q. I will ask you, if I have not already done so, what was stored in the house at the time.

A. Largely hay.

Q. Much, or little?

A. Considerable of it.

Q. As to these two tracks running into the house, how high up would they come with reference to the height of the locomotive, taking the stack and all; how high did the hay in the warehouse compare with the height of the locomotive that might be on these two tracks?

A. I don't know that I could state that exactly, for the reason that I don't know the heights from the platform.

Q. As near as you can; don't ask you to state exactly.

A. Nearly the same height.

Q. Do you know whose hay this was?

A. No, sir.

Q. Hay for which the C., P. & St. L. was in any way responsible?

A. No, sir.

Q. Had it come in over the C., P. & St. L.?

A. Not that I know of.

Q. Did the C., P. & St. L. have any charge of this hay, any responsibility?

A. No, sir.

Q. Now as to the cars stored on the tracks, were there any other cars or property than that of the C., P. & St. L. upon the tracks next to the warehouse?

A. Yes, sir.

Q. How were the tracks used, exclusively for the business of the C., P. & St. L.?

A. No, no, never has been so.

Q. Who used them?

A. The Terminal Association used them; and we used them; in fact we have never had any rights.

198 Q. Did you have any control or direction as chief clerk in the office as to the particular place of deposit of cars brought in by the C., P. & St. L.?

A. No, sir.

Q. Did anybody in your office?

A. No, sir.

Q. Who managed as to the place of deposit?

A. The Terminal Association.

Q. Where did the Terminal Association take possession of these cars, speaking by the plat which you have made an exhibit to your evidence?

A. Our train always pulled in on the curved tracks at the north of the freight-house; there the engines were cut off and the Terminal Association engines took hold of the cars and stored them as they saw fit and where, and made deliveries as per bills.

Mr. HANSON: Waybills?

A. Yes, sir.

Q. Mr. Felps in his examination-in-chief, testified that from the time cars were deposited on these circular tracks north of the freight-house, the receiver had nothing to do with them.

Mr. HANSON: Don't know as he testified that way.

Q. At page seven in the transcript of the evidence of Mr. Felps, introduced by the petitioner, this memorandum occurs, and these questions and answers appear.

Q. Now when a train of the receiver comes into this yard from the north, where will it come to a stop in reference to any track on this map?

Objection.—Unless he testifies with some degree of care with reference to map, it will not be understood by the master or the court.

Q. I will designate the track.

A. The tracks known as the "Y's"—three "Y" tracks there; freight trains come in there and stop.

Q. Are those the tracks referred to on your plat, circular tracks north of the freight-house?

A. Yes, sir.

Q. Question again:

Q. Those "Y" tracks are the tracks which appear on this map as connecting—and on the map marked Terminal Association range yard—to the Wabash junction; they are just north——

A. North and west of the portion of the yard assigned to the C., P. & St. L.

Q. Is that correct?

A. Yes, sir.

Q. North and west of the tracks marked red?

199 A. Yes, sir.

Q. A train comes in on this "Y;" what is then done with it by the receiver, if anything?

A. The train stops on the "Y," and the receiver is done with them.

Q. Is that true?

A. Yes, sir.

Q. Now I ask you, having read from the testimony of Mr. Felps, if that statement is true, as to the deposit of the cars, and the actual handling of them.

A. The receiver does not handle the cars or control their handling in a direct way after that.

Q. Then do you or not agree with the statement of Mr. Felps,

that the receiver was done with the handling of the cars, so far as they are delivered at East St. Louis?

Mr. HANSON: Done with them? What? Done handling them?

Q. Answer.

A. Mr. Felps being agent of the Terminal Association and taking into consideration the relations that have always existed, that must be the fact.

Q. Does that accord with your observation as to the actual handling of the cars?

A. Yes, sir.

Q. You tried that night to direct the yardmaster as to the manner in which he should fight this fire?

A. Will not state it was the yardmaster. It was an employé of the Terminal Association, employed in a switching capacity.

Q. Did he accept your suggestion?

A. No, sir.

Q. Did any of them?

A. No, sir; Mr. Keemer and I saw the Merchants' Bridge engine in the place set apart to our engine, and the switchman was sitting down by his engine fast asleep. Mr. Keemer and I waked him up; we asked him to take hold, and he said he would when there was any danger; one of the cars was this car of glucose.

Q. As the result of your observations on the ground that night, of all you saw and all you did, and speaking of your experience as an employé in and about this yard for five years, I will ask you what in your judgment would have been the effect upon the loss suffered by the owners of the property that was burned, if your directions had been followed, and if you had been permitted to take the engines and have them used as you first desired to have them used.

200 Objection.—If that is material, it is for the court to pass upon and not the witness. Object to it.

Q. I will ask you to answer the question.

The MASTER: Of course, the materiality will be determined after all the evidence is in.

Mr. HANSON: I think the master is capable of determining that now, as well as after all the evidence is in.

The MASTER: It is simply asking for his opinion, if his instructions had been carried out, what would have been the effect of it.

(Objection not sustained; exception by intervenors)

Q. Answer.

A. In my judgment the loss would have been less.

Q. Materially less?

A. Yes, sir.

Q. The cars on which tracks, speaking by your plat, would have been saved that were burned?

(Objection for the same reason.)

The MASTER: Carrying it rather into detail.

Q. I am asking him to speak by the plat?

The MASTER: I have allowed him to answer.
(Objection not sustained; exception by intervenors.)

A. We could have saved some cars on the tracks west of the transfer-house, and more on the east of the transfer-house.

Q. What did those cars contain?

A. Contained barley and hard coal principally, and some empty cars.

Q. From the time you arrived upon the ground until the fire had done its work or so long as you remained, were you able to exercise any control or direction as to the manner in which the engines were handled?

A. I was not.

Q. Why?

A. Well, simply because my efforts in that direction were paid no attention to.

Q. Was the fire continuing the next morning?

A. Yes, sir, to a certain extent.

Q. You speak of coal; do you mean hard coal?

A. Yes, sir.

Q. I will ask you whether or not this coal, or any portion of it, could have been saved under your direction?

(Objection.—Asking for the opinion of the witness, on a matter not a subject of opinion. Immaterial.)

A. Owing to the fact that hard coal in quantities is extremely hard to take hold of the fire, there could have been a con-
201 siderable part of that hard coal saved, because the hard coal was not on fire yet the next morning.

(Objection.—No coal involved in this controversy at all.)

Q. Cars involved?

Cross-examination by Mr. HANSON:

Q. You say this warehouse had stored in it a considerable quantity of hay at the time of the fire?

A. Yes, sir.

Q. How long had that hay been stored there?

A. I couldn't say.

Q. How long had hay been stored there—not this particular hay, but any?

A. I couldn't say.

Q. About how long would you say?

A. I would hate to answer that question, because I have no definite knowledge on the subject. I know there was hay there that night, and I had seen hay previous to that.

Q. Do you know that this part of the warehouse had been leased to a hay company?

A. I don't.

Q. I think Major Wilson drew it out of one of the witnesses.

A. I understand, but don't know about it.

Q. Do you say this house was so constructed that sparks could easily fall on the hay and set it afire?

A. They could easily fall from the end doors, or at the sides from the looseness of the doors there. I should judge so, because the doors were loose and slid up and down, this way.

Q. How long did that state of things exist?

A. From the time it was built.

Q. How long before the fire?

A. I couldn't say.

Q. A year, or two or three years?

A. I don't know. I was employed in the transfer-house for six months, but this was quite a period of time after that.

Q. So it had existed in that condition a year?

A. I wouldn't say because I don't know.

Q. These tracks I understand, in the immediate vicinity of the warehouse, were not exclusively used by the C., P. & St. L. trains?

A. No, sir.

Q. But commonly, for setting cars in there?

A. Just as the Terminal Association saw fit—put our cars there if they saw fit.

202 Q. Wasn't it a common thing to store your cars there?

A. Generally speaking the cars were put there.

Q. And at the time of the fire the cars were mostly C., P. & St. L. cars, a good number of them?

A. A good number of them.

Q. They were there awaiting further transportation to St. Louis, most of them——

Mr. WILSON: Well, now——

Q. If you know.

A. Yes, sir; there awaiting orders from the owners.

Q. Any more cars of the C., P. & St. L., at that time than usual located on the tracks, I mean at the time of the fire?

A. No; no more than usual, I believe; about the usual number for the season of the year.

Q. One day with another?

A. Yes, sir.

Q. The C., P. & St. L., or the receiver, had no yard engine of their own?

A. No, sir.

Q. Only the engine that put the trains in there and that belonged to the Terminal Association, that handled your cars?

A. I suppose it belonged to the Terminal Association; as to the ownership of the engine I could not testify positively.

Q. So far as you know, it belonged to the association?

A. Yes, sir.

Q. Was this fire, when you got to it, in the hay?

A. It was clear through the house at the time I got to the building.

Q. What time was that, if you know?

A. It was in the neighborhood of eleven o'clock.

Q. The hay was then burning?

A. Went like a flash through the whole house.

Q. Were you employed there nights?

A. No, sir.

Q. You had been employed at this station under Mr. Calvert how long?

A. Never employed at that station under Mr. Calvert.

Q. Where were you at the time of the fire?

A. Mr. Calvert's chief clerk, but not at this station, because our office is half a mile away.

Q. I mean at East St. Louis?

A. Yes, sir; at East St. Louis; I was in his employ.

Q. How long had you been under Mr. Calvert at East St. Louis prior to the fire?

A. Going on three years.

203 Q. You had to do with the business there of these cars standing on these tracks, did you not?

A. Yes, sir.

Q. Did there several engines come up there, after the fire started, to assist in saving the property?

A. Yes, sir.

Q. From what direction?

A. The Cairo Short Line engine came up, and the Merchants' Bridge engine came down, and more bridge engines from across the river.

Q. How many engines of the Terminal Association?

A. I couldn't say exactly.

Q. Anybody in charge of this work, or taking care of this property, who would naturally be——

A. Mr. Shawhan that night.

Q. He was yardmaster?

A. Yes, sir.

Q. He was the proper person to take charge of the engine?

A. Yes, sir; being the highest official of the Terminal Association.

Q. You think if you had had the handling of the engine you could have saved more than he did?

A. Yes, sir.

Q. The Major asked if the receiver was done with them, so far as handling the cars?

A. So far as the handling of the cars.

Q. The receiver did have something else to do with them with reference to sending them on to St. Louis in the way of giving waybills?

A. Yes, sir; giving waybills.

Q. That was after they were on these "Y" tracks?

A. Yes, sir.

Q. Now, Mr. Felps testified also to this: "When that train is broken up as I have stated, and the cars set on the tracks marked red," that is, these tracks by this warehouse, "we are then done

with them;" that is the Terminal Association is done with them, "until we get waybills from the C., P. & St. L., or the receiver." Is that true?

A. Yes, sir.

Q. When those waybills are made out by the agent at East St. Louis they are delivered to the Terminal Association?

A. And their receipt taken.

Q. Of the waybill?

A. Yes, sir.

Q. So you would have the receipt of every waybill delivered?

204 A. Yes, sir.

Q. Then the Terminal Association would take these cars according to the directions on the waybill?

A. Yes, sir.

Redirect by Mr. WILSON:

Q. Do you mean to say the receiver had control of these cars, so far as placing them is concerned, or handling them?

A. So far as placing them or handling them, he did not.

Q. Now, I will ask you whether cars billed, say from Wykoff, wherever that may be, to East St. Louis, with a memorandum on the face of the waybill which stated the name of the consignee in St. Louis, whether the C., P. & St. L., when it delivered the cars at these yards in East St. Louis, had hauled them as far as they contracted to haul them.

(Objection.)

A. They had. The destination of St. Louis on the bill cuts no figure in the matter whatever; the cars are brought in there and held, and the consignee is served with a regular notice.

Q. Then it is the consignee directs?

A. The consignee directs where he wants them; a large portion go to Belleville or Highland or Hines' brewery—to different places.

Q. I will ask you whether or not the waybill as to barley shipped on which you had had the name of the consignee in St. Louis was conclusive as to the ultimate destination of the car?

A. The barley shipment? By no means whatever.

Q. What became of it after placing it on the "Y"?

A. It would be hard to answer that question, because it goes to a thousand different places.

Mr. HANSON: In St. Louis?

A. St. Louis and East St. Louis both; no general place.

Q. In this barley—any of the barley received from the C., M. & St. P. prior to the date of the fire, and about which he has offered some memorandum waybills and so forth shipped to other points—East St. Louis?

A. Prior to the fire?

Q. I speak of prior to the fire?

A. Oh, yes.

Q. Who controlled as to the precise and definite point where it should be delivered?

A. The consignee in all cases.

Q. Then I will ask you what the custom was as between the C., P. & St. L. and the Terminal Railroad Association as to the further direction and final destination of the cars.

205 A. The cars would come in and be placed on the tracks in the Terminal Association yard wherever they saw fit; we would take the waybill and notify the consignee that we had a car numbered so and so loaded with barley; "Where do you want it?" That is about the substance of the notice; and at such time as he got ready he would send this notice back, endorsed on the back a great many times, Send this car to Hines' brewery, or Send it to Highland, or some other point. Then we take and make out a waybill; take that to Mr. Felps and take his receipt.

Q. Was that a different and separate transaction, having reference to the original contract between the shipper and the C., M. & St. P.; was it a new arrangement the consignee directed and controlled, or was it the original arrangement named by the shipper?

A. A new arrangement by the consignee, who placed orders with us to hold his barley.

Cross-examination by Mr. HANSON:

Q. You were holding these cars awaiting the further order of transportation of the cars?

(Objection.—Misleading.)

Q. I ask if the company that gave this notice to the consignee, the C., P. & St. L., after this notice, would hold these for further transportation, and when they got further orders would transport according to the order or give directions—that is, when the car comes into East St. Louis, you notified the consignee?

A. Yes, sir.

Q. Then you would hold it until you got an order, and then you would make out a waybill, and deliver it to the Terminal Association according to the direction of the consignee to take them on.

(Objection.—Putting words in the witness' mouth.)

Q. I am asking—strike this all out.

Mr. WILSON: I object to it being struck out.

Q. Won't you state again just what you stated before, so I will understand it, with reference to the custom in respect to barley coming to East St. Louis, consigned to Teichman & Company, St. Louis?

A. With reference to Teichman's barley, we would sometimes have orders in our office, in advance of the arrival of the cars, what disposition to make of them; others we wouldn't. Those we didn't, when they came, we sent Mr. Teichman notice that the cars were there, what shall we do with them? Virtually that is the substance; and he would at his pleasure, advise us to send the car so

and so, to Hines' brewery, say. We would make out a waybill for the car, consign it that way, and deliver it to Felps.

206 Q. Mr. Felps of the Terminal Association?

A. Yes, sir.

Q. So until you received this notice back you would hold that car, awaiting transportation back across the river, if he ordered it?

A. While the car was being held there as to the relationship existing there I am not competent to say.

Q. Not asking for the relationship; if you held this car under those circumstances, awaiting the destination across the river—order?

A. Inasmuch as we had no engine there, and could not control where we put the car, we naturally could not hold it, because if Mr. Felps was so disposed, he could put it where he pleased.

Q. Could Mr. Felps deliver it without a waybill?

A. Not as a general thing.

Q. Would he in any instance?

A. I have known it to be done.

Q. But that is an exception?

A. Yes, sir.

Q. The general custom was, he would not undertake to move it until he got a waybill?

A. That is right.

Q. And you delivered the waybill when you got direction from the consignee, and just to the point he wanted?

A. Yes, sir.

Q. That car stood there awaiting that waybill?

A. Yes, sir; awaiting that waybill, and where Mr. Felps would put it.

Redirect by Mr. WILSON:

Q. As a rule, how much time elapsed between the time these cars were put on the "Y" until they were finally disposed of?

(Objection.—Time that usually elapsed not binding.)

The MASTER: He has as much right to show custom as you have.

A. The time that elapsed between the time the cars came and the time they were pulled away to their final destination; sometimes it would vary; might be two hours or two months.

Q. At whose convenience?

A. Consignee's.

Q. When you received directions from the consignee who were they for?

A. Then we made a waybill and delivered that to Mr. Felps.

Q. The Terminal man?

A. Yes, sir.

207 Q. Were there directions for anything else except for the guidance of the Terminal Association in the handling of the cars?

A. Only in this way; if a man would say, Send this to Highland, that would be instruction to the Vandalia.

Q. But who would handle it?
A. The Terminal Association.
Q. During all the time that elapsed between the receiving of the cars at East St. Louis and their being sent to the "Y's" of the Terminal Association, under whose care, custody and control were the cars?

(Objection to the word "care." He can use the word custody if he wants to.)
(Objection and exception.)

A. In my opinion, they were in the care, custody and control of the Terminal Association, for this reason—I wish to explain why that is my opinion.

(Objection.—Not answering a fact.)

Q. You stand by your answer, do you?
A. Yes, sir; and for this reason: we had no engine there, and could not move the cars if we wanted to, without their permission. Therefore, the cars under those circumstances must have been in their control, and we at times, would issue orders what to do with them, but those were acted on at their convenience, therefore, they must have controlled them.

Cross-examination by Mr. HANSON:

Q. You are aware that this business was done under an agreement between you and the Terminal Association?
A. I was aware there was an agreement at one time, but which had ceased to exist.
Q. Isn't it true that in every instance of these shipments of barley that you received your orders were given by the consignee, Mr. Teichman, to you, and not to the Terminal Association?
A. No, sir.
Q. Now, if the cars were standing there, as you stated, awaiting transportation over the river to some point the consignee might designate, and you gave this notice to the consignee, didn't that notice come back from the consignee to you?
A. No, sir.
Q. I am asking for the practice?
A. Ordinarily this didn't come back.
Q. I mean the reply to your notice.
A. He might write a letter; might write to Mr. Roederer.
Q. Might?
A. Did a great many times.
208 Q. Notice came from the consignee to you customarily?
A. Yes, sir.

Redirect by Mr. WILSON:

Q. Who was Mr. Roederer?
A. Joint agent of the Terminal Association——

Q. Was he at that time?
A. Yes, sir.
Q. These notices were given to Roederer?
A. Yes, sir.

Cross-examination by Mr. HANSON:

Q. Roederer would give them over to you?
A. Yes, sir.
Q. Now what do you think of your opinion as to who had control of the cars?
A. I think they had control of them.
Q. But had to get orders of you?
A. Before they could find out how much money to collect.

Adjourned to 2 o'clock p. m.

Mr. STAPLETON recalled.

Direct by Mr. WILSON:

Q. In your testimony you spoke of having been at one time employed in and about this freight-transfer house; were you employed there as a representative of the C., P. & St. L.?
A. No, sir; I was paid by the Terminal Association.
Q. How long ago was that prior to this testimony?
A. Don't know exactly.
Q. Was it before you went into the service of the C., P. & St. L.?
A. Yes, sir; couldn't have been after; about three years.
Q. Your acquaintance with it grew out of your employment with the Terminal Association and not with the C., P. & St. L.?
A. Yes, sir.

209 *Testimony of John Wiedmer.*

JOHN WIEDMER sworn.

Direct by Mr. WILSON:

Q. Where do you live?
A. St. Louis.
Q. In what business?
A. Grain merchant.
Q. What firm?
A. Gratiot Street Warehouse Company.
Q. How long have you been identified with that firm?
A. About eight or nine years.
Q. You were then engaged in that capacity in October, 1894?
A. Yes, sir.
Q. Where did you receive and handle your merchandise; at what point?
A. You mean just in relation to this case?
Q. Yes, sir.
A. Received grain in what is known as the East St. Louis Terminal warehouse; I think that is what the name of it is.

Q. Do you know in what part of East St. Louis that warehouse is located?

A. As much as I know, it was in the Terminal Railway yards.

Q. At East St. Louis?

A Yes, sir.

Q. What kind of merchandise did you handle during that month?

A. Through that house?

Q. Yes, sir.

A. Hay.

Q. Through whom did you arrange for the occupancy of the house?

A. J. L. Penny commercial agent of the St. Louis Terminal railway.

Q. How long did you occupy it?

A. Not very clear on the date, but it seems to me about two or three months.

Q. Beginning when and ending when?

A. Beginning some time in August and ending with the burning of the warehouse.

Q. Do you know what was in the warehouse the night it was burned, chiefly?

A. Hay.

Q. Who owned the hay?

210 A. We did.

Q. About how much hay was there in the warehouse?

A. About a hundred and twenty-five car-loads of hay; would not be positive without looking at the books.

Q. Did you occupy this warehouse, or did you in connection with the occupancy of it have any dealings directly or indirectly, as you knew, with Mr. C. H. Bosworth, the receiver of the Chicago, Peoria & St. Louis?

A. Never.

Q. Or with any of his employés?

A. Never.

Q. I will ask you why you ceased to use this house?

A. Burned down.

Q. Did you have any written contract or agreement about it?

A. No, sir; no written agreement.

Q. You may state to the master the circumstances under which you ceased to occupy the premises, and any conference or conversation you may have had with the representatives of the St. Louis Terminal Association, just prior to the time of the fire.

A. Well, the best way for me to tell that is just the way I got hold of it.

(Objection.—Incompetent, immaterial and irrelevant, any conversation that occurred between this witness and any other party. I suppose it will be overruled. Exception.)

A. We were receiving quite a lot of hay from the west that we were reshipping for the south during this season of the year, and there being a competition between the Terminal railway and the

Wiggins ferry, the Terminal railway, that is Mr. Penny, their agent, asked to secure our business. I knew of this warehouse being vacant, it having been occupied by Payne Brothers, before we secured this storehouse, and I mentioned to him, if he would give me the right to take our hay through there, I would give him the hay to go over the bridge. He agreed to this; he agreed at that time in consideration of us giving him the business, he would let us take and transfer and assort our hay through the warehouse. At the same time there was a matter between me and him, if I found out by handling it there was anything to be made out of it, I would take and try to lease the place.

Q. Was your attention called during the time of your experimental operation of the warehouse, your occupation of it, to the conditions under which your hay was stored, whether safe or otherwise, and if so, did you make any statement about it to the Terminal Association or anybody else?

A. Of course, when I handle anything like hay, I know it is apt to catch fire and I naturally insure it, and called Mr. Penny's
211 attention to whether it would injure the insurance; told him better talk it up with his company, because hay is easily caught fire.

Q. Did you do this on general principle or by reason of any particular facts?

A. My experience; I think it was I called attention to it, about their guarding themselves against fire.

Q. How did you come to call their attention to the necessity. Did you see the warehouse?

A. Yes, sir; went and examined it.

Q. Saw the method of business transacted by the use of the engine?

A. Saw they were running trains through there.

Q. Did you think it was safe?

A. Didn't think it was safe.

Q. On that ground you insured the property?

A. Yes, sir.

Q. Did you make any negotiations with the C., P. & St. L. as to the use of those tracks, handling your cars, shipping your freight?

A. No, sir.

Q. You didn't know the C., P. & St. L.?

A. Had no connection with them whatever.

Q. How long after did you take out this insurance?

A. The very first day after—after its being taken out of the cars I insured it.

Q. How was this hay used with reference to tracks running into or through the building and with reference to tracks on each side?

A. Platforms on each side; stored my hay on those platforms.

Q. About how far from the tracks would it be?

A. There was room enough to take and handle a couple of bales of hay between the hay and the cars.

Q. Very close?

A. I should judge within four or five feet of the cars.

Q. You say this hay came in from the west and was going south?
A. Yes, sir.
Q. Did it come over the C., P. & St. L.?
A. Might have received some over that road, but the bulk of it from the west.
Q. I will ask you if, during the time your hay was stored there, you saw the engine passing through these tracks or passing near the building?
212 A. Never saw an engine going through the building, but the track kept clear—pushing our cars through, and I surmised they were just as apt to take our cars and run them in there with an engine next to the cars as not.
Q. Did you use the outside tracks, also, as well as the tracks inside the building for loading and unloading?
A. Yes, sir; I think we loaded from one of the outside tracks; wouldn't be sure about that. Think we generally did it from the inside tracks.
Q. What is your impression?
A. My impression is, if I had occasion to use one of the side tracks, I would have done it.
Q. This commercial agent, Penny, did he tell you you could use the tracks outside the building if you wanted to?
A. My recollection is he told me I could load anywhere I wanted to around there; place it where I ordered it.
Q. Used the tracks inside or outside as suited your convenience?
A. I could have done so; don't know that I used the outside.

Cross-examination by Mr. HANSON:

Q. Then you regarded that warehouse stored with hay and so easily caught fire, located in connection with the tracks, as a source of great danger from fire?
A. I should judge so, because it was open——
Q. How long had you had hay stored there?
A. Some time in the latter part of August, about the time new hay begins to move.
Q. It was because you regarded it as a source of danger you saw the necessity of insurance, and insured it for protection?
A. As I said before, I always insure everything.
Q. You don't know how much hay you had there during the three months that — came over the C., P. & St. L. tracks?
A. I couldn't say; might have been a good deal; might have been none.

Redirect by Mr. WILSON:

Q. At the time you arranged with Penny, the commercial agent of the St. Louis Terminal Association, for the use of the warehouse, I will ask whether you were influenced at all by the fact that these tracks, or some of the tracks, were located outside and immediately adjacent to the building, and some inside, and you could have the use of any of them?

A. Yes, sir, that had an influence; because it would be very convenient to load either way.

213 Q. No question by Mr. Penny at the time of anybody else having a right to exclude you?

A. No, sir.

Q. You contracted with him on the understanding that he had full control of the transaction?

A. Yes, sir.

Testimony of B. D. Kane.

B. D. KANE sworn.

Direct by Mr. WILSON:

Q. What employment or business were you engaged in in October, 1894?

A. Car-repairing.

Q. In the service of what company?

A. C., P. & St. L.

Q. How long had you been engaged in that capacity?

A. About two months prior to the fire.

Q. Were you present in the yards of the St. Louis Terminal Association on the night of the fire?

A. Yes, sir.

Q. About what time did the fire start?

A. About ten fifty.

Q. How soon were you upon the ground after that?

A. About ten minutes later.

Q. About eleven o'clock?

A. Yes, sir.

Q. I will ask you to state in your own way what you did; what condition you found when you got there, and what you did.

A. I saw the fire had started in the southeast corner and was spreading, and I ran right to our office, which is right opposite; car we had there called our office. And then through over to the yards and around on the side, and I met Mr. Stapleton and the crowd started; and I asked two switchmen if they wouldn't go and pull on the other side of the house before the fire got started there, but they wouldn't do it.

Q. Which side of the house were the switchmen you have in mind?

A. East side of the house.

Q. How far from the house?

A. They were pulling their cars there, about two or three tracks.

Q. Whose cars?

A. Pulling on their own cars, the Terminal cars.

214 Q. Terminal cars?

A. Yes, sir.

Q. Were those cars being pulled then in immediate danger of fire?

A. No, sir.

Q. What cars was it you had in mind when you asked them to cease pulling there and pull at the other place?

A. I meant pull the cars on forty-four and forty-five, next to the warehouse, on the west side.

Q. They declined?

A. Yes, sir.

Q. What did they say to you about it?

A. One of them wanted to know when I got my name on the time-card; told me to go and mind my business.

Q. Did you call Stapleton's attention to the fact that the cars that were being pulled were remote from the fire and those you wanted pulled were nearer the fire?

A. Yes, sir; but he said what can we do; they won't do nothing.

Q. Did they pull any C., P. & St. L. cars, and if so, when did they begin to do that?

A. Well, they pulled track forty-nine, but when I came round there, on that side, I asked them to pull track forty-seven. There was a Glen Carbon car, a lot of this glucose merchandise there. They pulled forty-nine, and then the Merchants' Bridge engine pulled in and blocked it behind the "Y."

Q. Blocked what?

A. Blocked the engine by pushing cars down so it couldn't get out.

Q. What engine was blocked?

A. Merchants' Bridge engine was blocked, when it did pull in, blocked by the Terminal.

Q. So it couldn't get out?

A. Yes, sir.

Q. Was your attention called to the C., P. & St. L. engine near the freight-house, at the time, as to whether it was in a position to be used?

A. Yes, sir; so the hostler stated.

Q. Why wasn't it used?

A. I was there, but I asked the hostler afterwards and he said he couldn't get out on account of the "Y" being blocked, and I noticed it blocked.

Q. What was it blocked it?

A. The bridge pushing down cars on the "Y."

Q. You mean the Terminal Railroad bridge?

215 A. Yes, sir.

Q. Do you know the number of that car that contained the merchandise you refer to?

A. Yes, sir.

Q. What was it?

A. Forty twenty (?) C., P. & St. L.

Q. As the result of your observation and what you tried to do, state whether the cars of the C., P. & St. L. received the same attention from the employés of the Railroad Terminal Association that the cars of the Terminal Association did.

(Objection.—Incompetent, immaterial and irrelevant; not a matter of expert testimony and not competent for this witness to give.)

The MASTER: I will not exclude it.
(Exception by intervenors.)

A. No, they did not.

Q. As the result of your observation, what you saw done and what you did, I will ask whether any of the cars you saw in the house need to have burned?

(Objection, for the same reason.)

A. When I went over on the east side to where the engines were, the cars on forty-four next to that side were perfectly safe.

Q. Any reason why these cars couldn't have been taken out?

(Objection.)

A. No, sir.

Q. Were you familiar with the location of this freight-transfer house and its condition whether open or closed?

A. I used to go in there fifteen or twenty times a day.

Q. What was it stored with?

A. Hay.

Q. Anything to prevent sparks from locomotives flying into the entries?

A. No, sir; the front perfectly open.

Q. What do you mean by front?

A. That is the north where they push the cars in.

Q. Entirely open?

A. Yes, sir.

Q. I will ask you whether the same is true with reference to the south end?

A. Yes, sir.

Q. That was open also?

A. Yes, sir.

Q. Side doors closed or not?

A. Closed but in poor condition; a fellow could push through some of the doors on the side; if we wanted to go in where
216 the hay was not piled too close, we just pushed in the door and slipped in through.

Q. How close was the hay on either side of the freight-house?

A. Pretty hard to tell; piled very high in some places; other places low; lots of places the wire was broken and the hay had fallen and it was right at the edge of the platform.

Q. Next to the outer doors?

A. Yes, sir.

Q. Wire that bailed the hay, and the hay had fallen down next to the door?

A. Next the platform and track where they unloaded.

Mr. HANSON: How long before the fire did you see that condition? Not quite through with him yet; did you ever see the engine of the Terminal Railroad Association running into this transfer-house with the hay in there?

A. Yes, sir.

Q. Ever call their attention or anybody's attention, any of the

Transfer Association employés to the fact of the danger of the fire, and if so, where and under what circumstances?

A. I went there about two weeks before the fire to get a bucket of water one afternoon, and there was about three cars in the freight-house; they went in after one with the engine alone and drawed it out; fellow they call Sandy; I said You've got nerve going in there with your engine; Oh, well, he says, nothing to you. Last time I looked in there I saw smoke rolling up out of the lattice-work on the roof.

Q. Hay in there at the same time?

A. Yes, sir.

Q. Know where this hay came from?

A. No, sir; I remember their storing it.

Q. Under the control of the C., P. & St. L. in any way?

A. No, sir; not that I know.

Cross-examination by Mr. HANSON:

Q. How long before the fire had you seen this condition, with reference to hay hanging out of the bales broken?

A. As long as I have been going in there I have noticed loose hay.

Q. Two or three months?

A. No, I would say a month.

Q. I understand it had been used about three months before the fire to store hay; did you hear Mr. Wiedner's testimony?

A. Perhaps it might, I didn't have occasion to know.

Q. So observable to you that there was danger that you called attention of one of the employés to the fact?

217 A. Standing on the platform.

Q. What were you doing there fifteen or twenty times a day?

A. Used to go after water and sometimes go to fix a car.

Q. What was your employment?

A. Car-repairer.

Q. For the C., P. & St. L.?

A. Yes, sir.

Q. There fifteen or twenty times a day in this warehouse?

A. Yes, sir.

Q. How far was this warehouse from Mr. Calvert's office?

A. From the C., P. & St. L. freight office?

Q. Yes, sir; Mr. Calvert's office.

A. About half a mile or three-quarters.

Q. Did his business require him over there occasionally?

A. Yes, sir.

Q. How often?

A. I couldn't say exactly.

Q. While you were employed there two or three months before the fire see him there?

A. Saw him a month before the fire.

Q. How was it about Mr. Stapleton, see him?

A. Yes, sir; would see him there.

Q. What other employés of the C., P. & St. L. did you see about this warehouse?

A. Saw none, only the fellow that worked with me.

Q. What had Mr. Calvert or Mr. Stapleton to do about the warehouse so much?

A. Don't know, never asked them.

Q. You saw them there, but don't know what they were there for?

A. That's it.

Q. You went there to repair cars?

A. Yes, sir.

Redirect by Mr. WILSON:

Q. How close was your workshop or regular place of business, as a car-repairer to the freight-transfer house?

A. Six tracks; distance of about twenty-five or thirty feet.

Q. That is the way you were there?

A. Yes, sir.

Q. Car-repairer, and about your proper business?

A. Yes, sir.

Q. I will ask you whether this general condition as to the loose hay and the condition of the hay and so forth was not the
218 condition on each of the times you went in there, was not the general condition?

A. Yes, sir; always so; tramps used to go in there to sleep at night.

Q. Are you now in the employ of the C, P. & St. L.?

A. No, sir.

Q. Did you have in your capacity of car-repairer any control or right of direction whatever as to the kind of use that was being made of this freight-house, or who stayed there?

A. You mean if I had any business ordering anybody around there?

Q. Yes, sir.

A. No, sir.

Q. If there were tramps in there was it your business to keep them out?

A. No, sir.

Cross-examination by Mr. HANSON:

Q. Did you report that to anybody, about tramps sleeping there?

A. No, sir; I didn't.

Mr. WILSON: I desire to call the attention of the master to the fact that the witness Keemer, who was present under a subpœna, without my knowledge, in the course of his business in the employ of the Bluff Line railroad was called to take a train out, and has left.

Mr. HANSON: Maybe we can admit what you want to prove by

him. (After examining a paper handed him by Mr. Wilson.) I will admit that if this witness was present and sworn, he would testify as Mr. Wilson will now read to the reporter; but that part of the testimony of the witness as to what could have been done if something else had not been done, is taken under my exception.

Mr. WILSON: The night of October 28th, 1894, the witness Keemer was sleeping in caboose seventy-eight, C., P. & St. L. railway; that he was conductor of that train; that he was awakened by a brakeman, Thomas Tahan, saying, Get up, see the fire; that he did get up, climbed into the cupola of the caboose and saw that the transfer shed was afire in the southeast end when he first saw it; that he dressed as quickly as possible and went out to see what he could do, and that by the time he got to the main track or "Y" a switch-engine of the Terminal Railroad Association blocked his engine in so as to prevent him from rendering any help from that source; then he asked a switchman of the Terminal Railroad
219 Association to pull a certain caboose out and he said Damn the caboose, save the cars, and that the switchman then pulled a cut of cars from between the caboose and the fire and started up in his yard; that a foreman of the Terminal Association stopped them and told them to get the caboose; they went back, coupled on the caboose and cut off a car of merchandise attached to it; it was a car of merchandise; and that he believed from his observation more cars could have been saved than were saved; that he himself took water out of a cooler in the caboose and put out a fire burning on one of the cars.

Your honor, that is the statement, and your honor holds, I understand, that the statement should go in, and I should proceed, without having the benefit of the statement of the witness.

The MASTER: I don't hold that. I hold if you want to put it in you can do so.

Mr. HANSON: It is understood that if the witness was present he would testify as the Major has read to the reporter.

The MASTER: I don't compel you to put him in now.

Mr. WILSON: I had understood, may it please your honor, that under the ruling and agreement of opposing counsel, stipulating as to what the witnsss would testify to, defeated an application or movement for postponement of the hearing, until the witness can be present. If your honor does not hold that I am concluded by the stipulation of counsel; I very much prefer to call the witness himself at the very earliest date and have him testify. I would rather have his deposition than his statement.

Mr. HANSON: If you want to call him later on I will not object.

Mr. WILSON: With the understanding that I may call the witness at a later time if I want to, let the record stand.

Testimony of S. S. Bennett.

S. S. BENNETT, sworn.

Direct by Mr. WILSON:

Q. Where do you live?
A. Springfield.
Q. Where were you employed and in the service of what company the night of October 28th, 1894?
A. Brakeman on the C., P. & St. L. railroad.
Q. Remember the fire that night?
A. Yes, sir; asleep in caboose seventy-eight.
Q. Who was with you at the time?
A. Conductor Keemer and Brakeman Tehan.
220 Q. How far was the caboose in which you were sleeping from the freight warehouse where the fire occurred?
A. It was about three tracks I think or four.
Q. When did you get into the yard from that run?
A. Came in Saturday night.
Q. Who was conductor?
A. Keemer.
Q. Tahan the other brakeman?
A. Yes, sir.
Q. Three tracks from the fire?
A. Yes, sir.
Q. When was your attention called to the fire and by whom?
A. Tehan got up; when I looked at my watch it was about five minutes to eleven. He got up and hollered there was a fire; when we got out it was eleven or eleven five.
Q. How far had the fire progressed?
A. Half of the building when we saw it.
Q. What part of the building?
A. West side.
Q. Which end?
A. I suppose you call it the south end from here.
Q. Locating the building from here, I will ask you whether it was not the southeast rather than the southwest that was afire?
A. Probably it was.
Q. What did you do when your attention was called to the fire and you were fully awake?
A. Got out to see what I could do.
Q. What did you do?
A. Found couldn't get no cars out and went to transferring merchandise to get it out of the way; canned goods.
Q. You state when you found you couldn't get cars out you went to transferring merchandise; tell the master why you couldn't move the cars; what prevented you?
A. Engine was blocked; Conductor Keemer said, Get our cars out; found it was blocked in.
Q. Who blocked it?

A. The Terminal, I suppose; blocked so our engine couldn't get out; shoved a cut of cars down on the "Y" and blocked our engine.

Q. Any effort made to remove——

A. Couldn't say.

Q. When you got ready to move your engine——

A. Couldn't get it out.

Q. After that you got to handling individual merchandise?

A. Yes, sir.

221 Q. Was the engine in condition to move?

A. Yes, sir.

Q. Something has been said in this testimony about a certain car of merchandise which might have been moved and which was not moved; what car is referred to; tell what you know?

A. Could have been got out just as easy as our caboose was got out, for it was coupled on.

Mr. HANSON: What was it?

A. Merchandise, Glen Carbon.

Mr. HANSON: Loaded with what?

A. Canned goods.

Q. General merchandise?

A. Yes, sir.

Q. Coupled on the caboose?

A. Yes, sir.

Q. Caboose saved?

A. Yes, sir.

Q. Why wasn't the car of the merchandise saved?

A. Cut off.

Q. Why?

A. Don't know.

Q. Who pulled the caboose out?

A. The Terminal engine.

Q. Any of the C., P. & St. L. engaged in handling?

A. No, sir; the Terminal engine went and caught hold of it and shoved it on the "Y."

Q. Attention called to the fact that the car of merchandise ties on, ought to have been hauled out at the time?

A. I can't say; called attention to the caboose; cars on the track; they said, Damn the caboose—get the cars out. That was all the remark I heard made.

Q. Merchandise car was cut off from the caboose and left to burn?

A. Yes, sir.

Q. How long were you there during the fire?

A. From the time the fire broke out till possibly twelve thirty; then went to bed.

Q. Who was in charge of and in control and direction of the resistance and opposition to the fire, fighting the fire?

A. All the Terminal people around there.

Q. Were they subject to your direction or that of Mr. Keemer?

A. No, sir, we had nothing to do with them.

Q. You stated you were there from about five minutes before eleven till when?

222 A. Till twelve thirty.

Q. I will ask you, as the result of your observations, what you saw done, what you tried to do and what you saw others doing, if all the cars of the C., P., & St. L. that might have been saved were saved?

(Objection.—Not a matter of expert opinion, and is immaterial in this controversy. It is for the court and not the witness to judge or give an opinion. Objection and exception.)

A. No, sir; don't think they were.

Q. Were there any bystanders, crowd of people gathered?

A. Yes, sir, large crowd.

Q. Any comments on the question of cutting this car loose?

(Objection. Sustained.)

Q. I expected to prove in response to that question, that the cutting off of this car of merchandise by the employés of the Railroad Terminal Association was so obviously a mistake, it raised a general outcry among the outsiders, and after that it was coupled on and pulled out in a burning condition.

The MASTER: You can except in the same way.

Q. I desire to have the exception noted.

Mr. WILSON: I next desire to put on the witness stand a witness by the name of Malone. We telegraphed and took all the proper steps and provisions in the way of tendering the witness, fees and so forth, but he was called out of town yesterday evening and was unable to attend.

Mr. HANSON: What do you want to prove by him?

Mr. WILSON: Here is his letter dated November 3, 1894.

Mr. HANSON (after inspecting the letter): I am willing he should testify that, subject to objections and inquiries involving his opinion. Those should be taken against my objection and exception.

Mr. WILSON: And subject to the understanding that if we can get the witness present personally, and we desire it, I now offer his official report of his knowledge of the fire, dated at East St. Louis, third day of November, 1894, and ask that it may be incorporated in the record.

Mr. HANSON: Consent that that may be received as his testimony; that is, if he was present he would testify to that statement and subject to my objections as to matters that involve his opinions.

#74. EAST ST. LOUIS, ILL., *Nov.* 3, 1894.

W. H. Calvert, Esq., agent, East St. Louis, Ill.

DEAR SIR: I got to the scene of the fire Sunday night last about 11.20. The cars on track No. 44 were then commencing to

223 burn. Cars on tracks 45, 46, 47, 48 and 49 could have been saved if the proper effort was made by the bridge crews. They

blocked our engine in the engine track, and would not allow the engineer to pull out. If our engine was at liberty, I think we could have saved all the cars on the tracks above mentioned. I assisted in transferring some canned goods, door frames and bed springs, and chained up cars on No. 50, so they could be pulled out. The bridge were working on their own side of the house (south), and did not do anything on our side until theirs was clear. The first engine I saw after I arrived there was a Merchants' Bridge engine on the north side of the house. They stayed there more than ten minutes before making any effort to pull cars, on account of an electric light wire being across the track. We were urging them all the time to go in and pull the merchandise car, but to no purpose.

Yours truly, J. B. MALONE.

Testimony of W. H. Calvert.

Mr. CALVERT recalled.

Direct by Mr. WILSON:

Q. You have been sworn in behalf of the petitioner?

A. Yes, sir.

Q. I now recall him in behalf of the receiver. I believe you have said that you were agent of the C., P. & St. L., in charge of its business at East St. Louis on the night of October 28, 1894, prior and subsequent to that time?

A. Yes, sir.

Q. Still in the service of the receiver?

A. Yes, sir.

Q. How long have you been employed at East St. Louis in and about the freight business of the C., P. & St. L. railway?

A. Three and a half years.

Q. That includes the period prior to the receivership and subsequent?

A. Yes, sir.

Q. I wish you would state again in brief terms your general duties.

A. I have general supervision of all the work of the C., P. & St. L. Company at that point.

Q. Familiar with the details under which the freight business of the receiver of the C., P. & St. L. is handled, are you?

A. Yes, sir.

Q. I will ask you if you are familiar with the location of the tracks of the main line of the C., P. & St. L. and on the yards of the St. Louis Railroad Terminal Association?

224 A. Yes, sir.

Q. Where do the tracks of the C., P. & St. L. end and the tracks of the Terminal begin? You have seen this blue print?

A. I have seen the blue print, but I don't believe I could explain without it.

(Blue print exhibited.)

Q. Look at the blue print and state in reference to it where the

tracks of the C., P. & St. L. railway end and those of the Terminal Association begin, so far as handling our freight is concerned.

A. Well, that blue print doesn't extend far enough. It would be off up in here, where our tracks would end; that is, a continuation of these tracks.

Q. In what direction in reference to the freight-house and how far away from it?

A. Northwest probably a quarter of a mile. The blue print don't go far enough over.

Q. As I understand, the C., P. & St. L. tracks are not represented on the blue print?

A. The C., P. & St. L. main-line terminus is not shown.

Q. And the end of the C., P. & St. L. tracks was at a distance how far north and west?

A. About a quarter of a mile from the freight terminal transfer warehouse.

Q. That is the warehouse referred to in the testimony?

A. Yes, sir.

Q. As the cars came over the C., P. & St. L. railroad, I will ask where the deposit is or was, so far as the engine is concerned, and the immediate control of those cars by the engine?

A. On these "Y's" that come right round here.

Q. Can you name those "Y's" so that any one reading the testimony could identify them from the blue print?

A. I think they are designated as the middle, north and south "Y's."

Mr. HANSON: Suppose we mark them.

Q. I will ask you to take a pen and mark on the blue print by crosses the tracks you refer to as the "Y's" tracks?

A. (Witness does so.)

Q. Make a good plain mark for all of them. Where do our engines couple and uncouple from the freight trains?

A. On those "Y's."

Q. I will ask you if those "Y's" are the designated places of deposit as between the Terminal Railroad Association and the C., P. & St. L.?

A. Yes, sir; that is as far as our trains go.

225 Q. I will ask you what understanding, if any there was, with the Terminal Association in reference to cars standing upon these tracks; who was to handle them and take charge of them?

Mr. HANSON: Is that controlled by written agreement, as to the handling of the cars; breaking up and making up trains?

A. There was an agreement at one time, which was entered into for six months, from June 1, 1891; I believe that was the date. Don't think that has been renewed; the work is being done I think under the provisions of that agreement with a great many alterations put on by the Terminal Association.

Mr. HANSON: Yet you know there is a written agreement in force at this time continuously, prior to the fire and since?

A. I have a copy of an agreement made for six months. If that agreement has ever been renewed I have never seen a copy of it and never been advised of it.

Mr. HANSON: If then that is controlled by agreement, I would ask to let the agreement speak for itself in the transaction of the business here, and not the witness.

Q. I will ask the witness what the understanding was under which these cars were deposited there, so far as care, custody and control of them is concerned, and I think the witness ought to answer the question as propounded to him?

(Objection.—If there was an agreement, that must control and not the witness. He has not the power to make a change in the agreement.)

A. I would say the original agreement as to handling that work——

Mr. HANSON: Not asking for the original agreement. I am asking if there was not an agreement in reference to making up and breaking up trains at that point?

Q. Now I ask the witness to answer that question?

Mr. HANSON: There is an agreement attached to the receiver's answer, as the agreement, and that provides for the making and breaking up of these trains; and that agreement controls instead of the witness.

Q. No evidence that the receiver ever ratified or adopted this contract, we claim, as the witness has stated, that the original agreement was modified entirely at the option of the Railroad Terminal Association.

Mr. HANSON: Not for the witness to say whether changed or not that agreement controls. I have asserted it as the agreement under which this work has been done at this point. I insist it is not proper for the witness to say what the agreement was when it is in writing.

The MASTER: His understanding of the agreement would
226 not control the agreement. He may give his understanding of it. The agreement may show an entirely different state of facts. I will admit his answer.

Cross-examination by Mr. HANSON:

Q. What was the date of this agreement, you say six months?

A. June 1, 1891.

Q. Do you know whether since that time there has been an agreement, a written agreement, made between your company and the Terminal Association?

A. No, I don't. I know since that time I have made an agreement with the representative of the Terminal Association myself for the modification of rules which they had put into effect.

Q. I am asking whether you know there has been a written agreement since that date, between the officers of the respective companies in reference to this work?

A. Will not say that I know there has not. Don't know that

there has. Don't know whether a written agreement or not. But if there was our company would not allow the Terminal Association to push us down there any way they want to whenever they see fit.

Q. There is a copy of the original agreement made in 1892. That is subsequent to the six months' agreement, isn't it?

A. Yes, sir.

Q. Do you know that that has been changed by the officers of the respective companies?

A. Yes, sir; I can swear positively that that was not the agreement under which the work was being done.

Q. I did not ask you that. I ask if you know that the officers have changed that by any other written agreement?

A. Can't say about that; can't say whether they have changed it or not, but I know our business has not been handled on the terms of this agreement; was not in October, 1894. Has been changed by the Terminal Association, whether by consent of our folks or not.

Q. Do you know that that agreement has been changed by another written agreement?

A. No, sir.

Q. Then, so far as you know, that was in force at the time of the fire?

A. Don't know that it was.

Q. Then you don't know anything about the agreement between these companies with respect to the transaction of the business?

227 A. Not since that original agreement.

Mr. HANSON: Now, I object to what the witness says with respect to the agreement.

Redirect by Mr. WILSON:

Q. I understand he may answer.

The MASTER: I ruled that before, but he seems to have ruled himself out by saying he knows nothing about it.

Q. Do I understand your honor to rule that he shall not answer a question as to what the understanding was as to the deposit of cars upon the "Y's" indicated on the blue print, and as to the care, custody and control of them?

The MASTER: No, sir; I do not rule it out.

Q. I will ask the reporter, then, to read the question. (Reporter then read the question, as follows:) I ask the witness what the understanding was under which these cars were deposited there, so far as the cars, custody and control of them is concerned?

Objection.—As the question is put, it is objectionable.)

A. The trains after arriving in the bridge yard on one of the three "Y's" is deposited there, our engine is cut loose and taken in charge by a hostler, and the train is then taken in charge by the Terminal Railroad Association and is broken up, and the cars deposited one place and another on the tracks in the yard.

Q. Your attention has been called, in the course of the examination of other witnesses, to certain waybills which are in evidence; waybills, for instance, running from a place called Wykoff, and destined to East St. Louis, with a memorandum on the face of the waybill as to the name of the consignee and his residence; now I will ask you to state at what point in the course of business the C., P. & St. L. railroad ceased to have control over cars such as have been indicated by that waybill as a common carrier.

(Objection.—As asking for the opinion of witness and giving the law of the case. He says what time they ceased to have control of the cars as a common carrier. That is the question for the master and the court. Object for that reason. Let him state the facts and some one else decide the question.)

Q. May he answer, subject to exception?

The MASTER: Yes, sir.

A. So far as the final disposition of the property is concerned we retain a certain control of it, but so far as the physical movement of the car is concerned it is entirely out of our hands.

228 Q. Did you have any more handling of that car?

A. No, sir.

Q. Did your engine ever attach to or tie onto those cars?

A. No, sir; entirely through with them, so far as the actual movement about the yard is concerned.

Q. What is the destination of the cars in the course of business consigned to parties living in St. Louis as indicated upon the waybill; what is the destination as indicated by the waybill?

A. Governed altogether by the wishes of the consignee.

Q. The fact that cars were billed as I have indicated, was that conclusive of the fact that the cars were to go to St. Louis?

A. Not by any means.

Q. What became of those cars, and how were they disposed of and handled?

A. Ordered to various points on the river; some of them to Hines' Brewing Company, East St. Louis; some to Belleville, and I can't recall all the places. But there were some three or four or five points about East St. Louis where they were frequently ordered and didn't go across the river at all. Then they were delivered in a dozen different places in St. Louis.

Q. Who made those deliveries after you had received directions as to the place of deposit?

A. Such as were ordered delivered on the tracks of the Terminal Association, they made the final delivery; such as were ordered delivered may be on tracks of various connecting lines, the Terminal Association delivered the cars to such, who made final delivery.

Q. You didn't handle the cars at all?

A. No, sir.

Q. Who gave directions as to the final disposition of the cars?

A. The consignees.

Q. Through whom did they give them?

A. Through me.
Q. Always through you?
A. Not always.
Q. Do you know Mr. Roederer, the joint agent?
A. Joint agent of the Terminal Association and the Merchants' bridge; yes, sir.
Q. Ever get directions from him?
A. Yes, sir; I have received orders from him for the delivery of cars to their company, and barley in particular, where he would merely send me a message over his own name stating that he held an order, say from the Teichman Commission Company, if you please, car so and so, please deliver to St. Louis, such and such a place. The original order of the Teichman Commission Company sometimes would follow, sometimes would not.
229 Q. What proportion of these cars containing barley went to St. Louis and to other places?
A. That is a pretty hard question to answer.
Q. As near as you can.
A. I presume there was ninety per cent. of them crossed the river to various points in St. Louis; ten per cent. went to various points around East St. Louis.
Q. I understood you to say, the place of deposit of cars coming in was on these "Y's" you have marked.
A. So far as we are concerned the C., P. & St. L.
Q. After the consignee had been heard from, either directly to you or through Roederer or any other agent of the Terminal Association, or whatever source, did the C., P. & St. L. Company ever tie onto them again?
A. No, sir.
Q. Did you, as chief agent of the receiver at East St. Louis, have any control or direction as to the particular tracks in the yard of the Terminal Association upon which the cars were to be deposited and placed?
A. No, sir.
Q. Who directed that and controlled it?
A. The Terminal Railroad Association.
Q. Something has been said in the course of this testimony about the freight transfer house and tracks from forty to fifty; under whose direction and control was the freight-transfer house?
A. Terminal Railroad Association's.
Q. Did you have any control over it whatever?
A. None whatever.
Q. Did you ever assume to act under order or directions either as to what should be stored in the warehouse or as to the manner in which its contents should be looked after?
A. No, sir.
Q. Did you consider you had any right?
A. No, sir; we had none and didn't consider we had.
Q. I will ask you whether the tracks from forty to fifty were, as has been stated by witnesses in behalf of the Terminal Association, under your exclusive control and direction, as agent of the receiver.

A. No, sir.

Q. What control did you have?

A. I had no control; couldn't order cars put on there or cars taken off. Such as the Terminal Association might elect to put on there were put there.

Q. Do you know whether the tracks from forty to fifty were used in common and promiscuously?

230 A. Yes, sir.

Mr. HANSON: Those the tracks marked red?

A. Those indicated there by red lines.

Q. In reference to the statements made by witnesses on behalf of the Terminal Association that the tracks from forty to fifty were under exclusive control by the C., P. & St. L., is that true?

A. No, sir.

Mr. HANSON: Never stated that; you tried to make them, but they never did.

Q. Did you have any control of the cars?

A. Never had any control over any tracks in the Terminal Association yard.

Q. Was your attention ever called to the use that was being made of this freight-transfer house, and if so when and by whom?

A. Yes, sir; my attention was called to it on several occasions. One time they leased it for the use of some man from Milwaukee; can't recall his name. For the purpose of working over a considerable quantity of grain damaged in an elevator at Carondelet. He had exclusive use of the house for some months. Cars all loaded at Carondelet and brought over and the grain worked over, gathered up and reshipped from the house.

Q. At a later time or about the fire?

A. At a later time, on the occasion of the hay, use of the house for hay, my attention was called to it. I also spoke to a representative of the Terminal Association. Can't say whether Mr. Felps or Mr. Dunlap, the general yardmaster; as to the chances of a big fire.

Q. Did you call attention——

A. I did one of them, but I don't remember which it was.

Q. The fact that storing hay there and putting your cars next to it, exposed your cars unnecessarily to danger?

A. Yes, sir.

Q. Did you protest against it?

A. Can't say I protested, because it was little use to protest, against anything. I spoke to them about the liability of conflagration from the hay with those engines working round. Can't say I entered a protest: merely in a conversation spoke about it.

Q. Was your conversation calculated to call their attention also to the fact?

A. Yes, sir; apparent to anybody going around there that there was great danger, without their attention being called to it.

Q. You have heard what witnesses have said called by the receiver as to the condition of the freight-house, the bad condition of the doors, being open at both ends, that true?

231 A. Yes, sir.
Q. Ever in the freight-house?
A. Many a time.
Q. Were you in it during the time it was stored with hay?
A. Can't say that I was through it; I was there and looked in it; can't say I walked through it, don't remember whether I did or not.
Q. You were present last Tuesday during the deposition of Mr. Felps?
A. Yes, sir.
Q. I will call your attention to the question and answer of Mr. Felps at page 7, as follows:
"Now when a train of the receiver comes into this yard from the north, where will it come to a stop in reference to the tracks on this map?" The answer is—Mr. Hanson says in reply to the suggestion, I will designate the track—then the answer is, "Tracks known as three 'Y' tracks, trains come in there and stop."
That in accordance with your knowledge?
A. Yes, sir.
Q. You have reference to the "Y's"?
A. Yes, sir.
Q. I read now: "Those 'Y' tracks are the tracks which appear on this map as connecting—marked Terminal Association range yard—to the Wabash junction. They are just north—answer, North and west if the portion of the yard assigned to the C., P. & St. L." Is that true?
A. Yes, sir.
Q. "North and west of the tracks marked red. Answer, Yes, sir." Is that true?
A. Yes, sir.
Q. Then this question: "Train comes in on this 'Y,' what is done with it by the receiver, if anything? Answer, The train stops on the 'Y' and the receiver is then done with them." Do you agree with that statement?
A. Yes, sir.
Q. Copy of a statement purporting to have been made by you, showing the loss and damage by this fire of October 28th. I will ask you for whom that statement was prepared, and on what account?
A. It was prepared on the request of Mr. Gregory in support of a claim against the insurance company.
Q. You have heard the depositions of the several witnesses; is there anything further that you think would be of advantage or interest to the receiver that you have not stated, or that I have not covered by my question, if so, state it.
A. I don't recall anything just now.

232 Cross-examination by Mr. HANSON:

Q. This question which the Major read you from the testimony of Mr. Felps, in which he answers, The train stops on the "Y," and the receiver is done with them; you understand by that the receiver is done handling the train?

A. Yes, sir; I understand by that, and no doubt Mr. Felps intended to convey, that, as far as the receiver is concerned, we could not move the cars any more.

Q. The receiver had no switch-engine or switch-yard at this place, or the C., P. & St. L.?

A. No, sir.

Q. So an arrangement was made between the two companies for the Terminal Association to handle the train of cars of the receiver of the C., P. & St. L. at St. Louis?

A. Yes, sir.

Q. When a train came in on this "Y," and the receiver's engine detached, and the Terminal Association would take the train, break it up and set the cars out on these tracks, they did that under this agreement, and the C., P. & St. L. paid fifty cents a car for doing that particular work, did it not?

A. Yes, sir.

Q. Now, then, Hines' Brewing Company and Belleville and other places you spoke of are not on the tracks of the C., P. & St. L., are they?

A. No, sir.

Q. So all this barley that came in was delivered over the Terminal Association to be taken to some other point not on your line?

A. No, sir; not all delivered over by a good deal.

Q. Delivered through to some other line?

A. Delivered much of it to the Wiggins Ferry Company.

Q. Yes, sir; when it was consigned that way?

A. Yes, sir.

Q. You spoke of these cars; you say about ninety per cent. of the cars would go over to St. Louis, and ten per cent. to other points; what do you mean?

A. I refer to the barley business of the season.

Q. How did you know that the receiver's cars or the cars of the C., P. and St. L. were usually and generally placed on these tracks marked red?

A. Yes, sir.

Q. And had been, in the practice of handling the cars?

A. Yes, sir; in fact had been placed all around there.

Q. Just prior to the fire you knew a great many of the receiver's cars were standing in the vicinity of that warehouse?

233 A. Yes, sir.

Q. Why did you call the attention of Mr. Felps or some one else of the Terminal Association to the fact that there was great danger, that hay being there, in the engines running about; why did you call their attention to that condition?

A. I didn't testify that I called the attention of Mr. Felps or some one else.

Q. Mr. Felps or Mr. Dunlap you said.

A. Well, I presume it was done from the fact that I was around looking after the business of the company generally and saw the danger myself.

Q. Were you about this warehouse frequently?

A. Frequently had business there with men in my employ; also the car-department men; car-repairers; also the Terminal Association.

Q. While you were there you were there for the receiver of the C., P. and St. L.?

A. Yes, sir; walked around to see the location and situation.

Q. How long had you noticed the disposition of things in this warehouse, as to hay being in there, before the fire?

A. Well, I don't remember just how I came by the information, but some one in my employ reported it to me, and I made a trip up there to see what the situation was.

Q. Do you know how long that was before the fire?

A. Know when they first began to use this house for that purpose; probably six weeks.

Q. Continue to use that all the time, handling hay at this warehouse?

A. Yes, sir; I so understand; using it continuously; had hay in it.

Q. How do you know that; were you there frequently?

A. How do I know what?

Q. That there was hay there up to the time of the fire?

A. Saw it.

Q. When you were going there?

A. Yes, sir.

Redirect by Mr. WILSON:

Q. Was there any other place in which you could have deposited these cars than the place of deposit designated in these "Y's"?

A. Those "Y's" were designated by the Terminal Association as the place where we should deposit our cars. When our train pulled into the yard, their switch-tender at the bridge junction, Wabash junction they call it, he threw the switches leading
234 to these "Y's." Our trains were not permitted to go in any other part of the yard.

Q. Did you have any control, authority or direction in the course of your administration down there by which you could have changed the location of these cars?

A. No, sir; neither was I consulted as to what suited our interests in regard to the matter.

Q. Who had the right of direction and control, and who exercised it as to these cars?

A. Well, that is a question I can't answer, as to what person; but the Terminal Railroad Association was the corporation that had that right. They had their general agent and also yardmaster, and I can't answer whether the agent or the yardmaster is the authority governing the movement of cars in the yard.

Q. Certain that you didn't have it?

A. Certain I didn't have it.

Q. I omitted to ask you as to these cars coming to the C., P. & St. L. from the Chicago, Milwaukee and St. Paul, how long, as a rule, the consignees left them there?

(Objection.—Incompetent, immaterial and irrelevant; not in the issue.)

A. That is a pretty hard matter for me to give an intelligent answer on.

Q. Shortest and longest time?

A. There is a great many of the cars we have orders for before they arrive, giving us designated points for their delivery; then there is a great many of them we don't get orders on for some time. Furthermore, there is one or two of the firms there that place an order at the beginning of the season to give either the Wiggins ferry Company or the Terminal Association all their business, which is then held by the Terminal Association or the Wiggins ferry, and forwarded on to the destination by orders direct from the consignees—either the Wiggins ferry or the Terminal Association. I should judge the average detention of that barley business would be, well, I will say a week. That is simply my guess.

Q. Give the shortest time and the longest time, and then the average, in your opinion?

A. Some of them would stay there for thirty days, and then some would go right through without stopping.

Q. Depended on——

A. Depended on the condition of the market, and the market was governed altogether by the condition of the weather; during warm weather they wouldn't unload; if we got a cold spell we would get a rush on the barley. Warm, slack up.

235 Q. After the cars arrived and you put them at the designated place of deposit on these "Y's," by means of our engines, I will ask you whether or not you proceeded to take the direction of the consignee pursuant to the waybill that accompanied the car, as a new matter, outside of the waybill, and for the convenience of the consignee?

A. New matter altogether. All barley business handled under special instructions issued by the consignees of the shippers. Furnished waybills to us. Information furnished on the waybills to us. Not so all of it; some, where it was billed directly through, of course not stopping; didn't ask the consignee for the disposition of that, but that is only to a brewery, for instance, that may know just how much they want to use, and have it billed that way; but all the other firms go and get special orders from the consignees.

—. As to the new agreement and direction from the consignee to you and as to the direction you gave to the Terminal Association, I will ask you whether that business was done in that method, with the knowledge, consent and approval of the Terminal Association and with their co-operation?

A. Well, they are aware of the way in which that business is handled.

Q. They knew of it?

A. They knew the manner in which it was handled, yes.

Q. Referring again to the waybill from Wycoff, if that was all you had received either from the consignee or the original shipper

at Wycoff, if you had never had any other direction, what more would you have had to do to discharge your duty as to that shipment?

Objection.—Asking for the legal opinion of the witness.

Q. If there had been no further direction than that contained in the waybill from Wycoff——

Mr. HANSON: The witness should understand under the mark consignee, there is St. Louis, Missouri, Teichman Company.

A. If I had been unable to receive instructions from the consignee, I would have communicated with the billing agent and asked him.
Q. Who do you mean?
A. Agent at the point of origin, Wycoff.

Cross-examination by Mr. HANSON:

Q. Then with such a waybill marked Teichman Commission Company, St. Louis, Missouri, before you referred the matter to the agent at Wycoff where the shipment started, you would find out where the Teichman Commission Company was, and where you could make delivery of cars?
236 A. Yes, sir.
Q. This testimony you have been giving with reference to custom applies to shipments generally of barley?
A. Yes, sir; so far as the C., P. & St. L. is concerned; can't answer as to custom on roads.

Redirect by Mr. WILSON:

Q. I will ask you, would you have undertaken to send this car to St. Louis, if you hadn't got the direction——
A. No, sir; because I would have had no guide.
Q. East St. Louis was the destination?
A. Yes, sir; until we received orders from the consignee as to the final disposition.

Cross-examination by Mr. HANSON:

Q. Would you seek out information to enable you to make a delivery of the contents of that car?
A. Yes, sir.
Q. Taking this waybill as a starter to find out?
A. Yes, sir.
Q. The only means you had?
A. The only means I had of learning with whom I should communicate for the order.

Redirect by Mr. WILSON:

Q. It is suggested by the receiver, who is present, and I will ask you if it is not and was not the ordinary way of billing these cars to bill them to East St. Louis and then leave the consignee to direct

you as to how or by what route they were to be shipped further to the final point of deposit?

A. That is the custom of billing freight, to lines entering East St. Louis.

Q. I will ask you whether that was done as part of the route for which you had received your full pay?

A. How is that?

Q. Was that included in the contract under which the freight was hauled?

A. Yes, sir.

Q. The cost of the transfer to St. Louis?

A. Yes, sir.

Q. Added that to the freight bill afterwards?

A. That is some of it we pay transfer on; some we don't.

237 Q. How do you distinguish?

A. That is governed altogether by the billing agent.

Q. At the other end?

A. Yes, sir; instructions put on there by him. This transfer is taken out of the rate from the billing point to East St. Louis.

Q. Comes out of yours?

A. Comes out of the revenue going to the line to East St. Louis.

Q. Does any revenue come to the C., P. & St. L. from the subsequent handling of the cars after being placed on the designated tracks, these "Y's"?

A. No, sir.

Cross-examination by Mr. HANSON:

Q. Isn't it true that the charges for taking this barley from East St. Louis to St. Louis by the Terminal Association, that charge was absorbed by the C., P. & St. L. in most cases?

A. It is absorbed by the line handling the freight to East St. Louis; it is handled, I understand—that point is governed altogether at the point of origin of shipment.

Q. Since we have got into this we had better make it plain; that applies to shipment in competitive territory, Iowa, Minnesota, and Wisconsin, to St. Louis?

A. Can't recall the points to which it applies.

Q. Wasn't that done to get shipments consigned to St. Louis by way of your line and not by lines that went into St. Louis by the other side of the river; you held out by your line the same as by the other lines—competition for that sort of traffic?

A. I confess it looks that way.

Q. Isn't it so?

A. Can't answer that intelligently because I know nothing about the traffic rates as issued by the C., M. & St. P. I understand that is brought this way, because they get better accommodations through the elevators, and the C., M. & St. P. get a longer haul of the business; more revenue to them.

Q. And it gives the C., P. & St. L. this barley business?

A. Gives the C., P. & St. L. part of it.

Redirect by Mr. WILSON:

Q. Will you tell the master to what point on the C., P. & St. L. the receiver was paid for transporting this barley?

A. They would be transporting it between Peoria and East St. Louis.

238 Q. What part of East St. Louis?

A. Terminus of our tracks.

Q. These tracks you have been speaking of?

A. Yes, sir.

Cross-examination by Mr. HANSON:

Q. This handling of the train after it got there and making delivery of the cars, you paid the Terminal Association for that, did you not?

A. I never paid it; that is in the agreement.

Q. That is in the agreement—fifty cents a car?

Testimony of C. H. Bosworth.

C. H. BOSWORTH sworn.

Direct by Mr. WILSON:

Q. You are the receiver of the C., P. & St. L.?

A. Yes, sir.

Q. When were you appointed?

A. September 21, 1893.

Q. You may state if your attention was called to the fire at East St. Louis on the night of October 28, 1884.

A. Yes, sir; it was; I was notified shortly after the fire was discovered. Went to East St. Louis on the train at seven that morning, going from here.

Q. It appears by witnesses called on behalf of the petitioners that your agent made whatever salvage was made following this fire, and later on that the cars damaged in the fire were repaired in your shops; is that a fact, and, if so, you may state under what understanding or circumstances you did so.

A. I believe the fact is that the wreckage was cleaned up by the St. Louis Terminal Association and in order to clear the tracks as fast as possible and put them in a shape for renewed use; wreckage had to be loaded on cars, which happened to be C., P. & St. L. coal cars; it may barely be, possibly by arrangement with the Terminal Association those cars were furnished them at their request by us, but I can't state that definitely. I think probably the cars were there and convenient for use, and in order to get the stuff out of the way as fast as possible, undertook to run them on our road and on the Jacksonville branch. The matter was done that way by agreement between myself and the Terminal Association, for the purpose of putting the tracks in a condition to be used, and under agreement with them that anything done in connection therewith should

be expressly without prejudice as to our claims as to their responsibility or theirs as to ours.

239 Q. With whom did you make that agreement?

A. Mr. Joseph Ramsey of the Terminal Association, made later on and confirmed in writing.

Q. With whom was the prior agreement made?

A. Mr. Ramsey.

Q. Do you now recall whether you gave your general solicitor any general directions to interview him?

A Yes, sir; I thought it was a step that demanded careful attention, and requested you to take the matter up; and I believe you called on Mr. Ramsey and his attorney, Mr. Watts, in a short time after.

Q. Acquainted with Mr. Ramsey's handwriting?

A. Yes, sir.

Q. I will ask you to look at this letter of November 6, 1894, and state whether that is the signature of Mr. Ramsey and whether you received that from him.

A. Yes, sir; that is his signature and I received it from him.

Q. I will call your attention to this closing sentence of the letter: "I am willing to agree that in removing this property, in order to secure as great salvage as possible from the damaged contents of cars, your action in so doing shall not prejudice you in any manner, so far as this company is concerned. Very truly yours, J. Ramsey." Is that true with reference to what was done in the way of salvage?

A. Yes, sir.

Q. I will ask you to append that letter to your evidence.

(Marked Exhibit 4)

Q. At a later time, when the question of repairing the cars damaged came up, referring particularly to the cars of the C., M. & St. P., you may state under what circumstances, if any, these cars were repaired in your shops, if they were so repaired.

Mr. HANSON: Was that in pursuance of correspondence?

A. Yes, sir; I believe it was.

Q. I will ask you to look at this letter and state whether you received that in due course and whether that was the basis on which you undertook to make whatever repairs were made on those cars.

A. Yes, sir, repairs were made on the cars—any cars that were repaired, it was done after corresponding with Mr. Ramsey and after the receipt of this letter from him.

Q. He states—quoting the last sentence—"While I advise you of our position, I state that your action in repairing shall not be construed as affecting the rights of either party in the premises." Is that so?

A. That was so understood.

240 Q. Append that to your testimony.

(Marked Exhibit 5.)

Q. Did you ever accept any claim based on the losses occasioned by this fire?

(Objection.)

The MASTER: He may answer.
(Exception by intervenors.)

A. So far as I know I never have accepted any claim or paid any claim.

Q. Something has been said here by witnesses for petitioners in reference to certain customs as between certain railroads, referring I believe to the American Railway Association.

Mr. HANSON: I offered a rule of the American Railway Association, with reference to junction reports and deliveries of cars.

Q. In that connection questions were asked of Mr. Beacham, I believe it was, superintendent of machinery and motive power of the C., M. & St. P. as to certain rules and conditions under which connecting lines of railway were to be held liable for delivery on connecting lines of railway. I will ask you to state whether or not there is anything in the rules of the Master Car Builders' Association, or any other association to which your attention has been called as receiver, and that you have accepted as a rule of liability, or imposing liability upon you in the premises.

A. No, sir; I don't think there is.

Q. Mr. Calvert, called as a witness, upon cross-examination, was shown a certain schedule or report made by him in reference to claims against insurance companies; I will ask you under what circumstances you directed that claim to be prepared and to what extent it went.

A. Well, our reasons for preparing that claim against the insurance companies were that it might be held that this loss was ours, and the insurance policy required certain condition to be fulfilled in the way of preparing claims for damage done, within certain days, and we felt it necessary to take those steps out of excessive precaution.

Q. What was the limit within which proof was to be filed?

A. I can't state; perhaps sixty days. Not absolutely certain.

Q. And this schedule was prepared in reference to that clause in the insurance policies?

A. Yes, sir.

Q. In the course of your experience as a railroad man, I will ask you whether your attention has been called to the course of freight business, and particularly in reference to the C., M. & St. P. barley business.

A. To a certain extent it has.

Q. As receiver, I will ask you to state between what points
241 you undertook to haul that barley and between what points you were paid.

A. Peoria and East St. Louis.

Q. What point in East St. Louis?

A. It is difficult for me to state that. I should say in answer to that question that we can't haul it further than the end of our rails.

Q. Where is the end of your rails?

A. At the bridge junction, unless the stuff was expected to be de-

livered at our freight-house or the yard tracks in connection, when it would be delivered to the Terminal Association.

Q. I refer you to a certain blue print offered on behalf of the petitioners, and call your attention to three certain "Y" tracks, upon which it appears from the statement of Mr. Calvert, Mr. Felps and others, these C., M. & St. P. and other cars hauled by you to East St. Louis were delivered, and ask you whether or not you exercised any right of control as a common carrier beyond these three "Y's"?

A. That is the place where all of our deliveries were made to the Terminal Association; our engine would pull the train into those "Y's," and their switch-engine would take it from there.

Q. Who had the care, custody and control after you delivered them on these three "Y's"?

A. The St. Louis Terminal Association, unquestionably.

Mr. HANSON: That is, that is your legal opinion?

A. No, they actually had the cars and custody of the cars; we had no agents to attend to the movement of them, or no engines.

Cross-examination by Mr. HANSON:

Q. You had no terminals there?

A. We have a small terminal on the river front, but no direct connection between the end of our main track——

Q. You have no switch-engine there?

A. No, sir.

Q. So when you bring any train over your line to East St. Louis you have to have them broken up, put on tracks of another company to carry out your duty as a common carrier, and you have made arrangements with the Terminal Association by agreement to do that for you, haven't you?

(Objection.)

A. We have an arrangement with the St. Louis Terminal Association whereby they handle that business for us.

Q. Why did you make that arrangement?

A. On account of the lack of terminal resources of our own.

242 Q. You understand it is the duty of the railway company as a common carrier to have terminal facilities to handle cars at its terminus?

A. I presume it is.

Q. And to carry out that duty you made this arrangement for the use of these tracks and engines at East St. Louis?

A. Either to carry out our duty or increase our business.

Q. Now, you stated that for the purpose of getting these cars which were burned or partially destroyed by fire away from the tracks, and to clear the tracks, you made this agreement with the Terminal Association about removing them and repairing them, and so forth?

A. Yes, sir.

Q. What cars have you reference to; cars you wanted to take away and remove?

A. Reference to all the cars damaged in that yard.

Q. And on what tracks?

A. Can't describe the tracks; brought into East St. Louis by our road, not intending to assist in clearing up other cars.

Q. Intended that to cover such cars as you had brought in over your road?

A. Yes, sir.

Q. That would include the C., M. & St. P. cars and other cars you had brought in there, and to clear up the tracks you had been using, you made that arrangement?

A. Yes, sir.

Q. The C., M. & St. P. or any one of these others parties to that arrangement?

A. Not that I know of.

Q. Controversy between you and the Terminal Association whether these cars were in your possession, or the possession of the Terminal Association, is there not?

A. I don't know whether there is a controversy on that particular point, but there is a controversy as to the responsibility for the loss.

Q. The Terminal Association claiming you are liable and you claiming they are. Now, as a matter of fact or matter of law, the cars, while and although they were on these tracks by the warehouse, as you have stated, still in your possession, if so, it would have been your duty to have repaired those cars or paid for them if destroyed?

A. Not if the responsibility was on the Terminal Association.

Q. I am asking if the cars and contents were in your possession; I am not saying that they were; I am asking if, as a matter of fact——

(Objection.—Asking for a legal conclusion.)

243 Q. Then it would have been your duty to have repaired the cars or paid for them?

A. If you will add: if they were on our rails, I will say, yes.

Q. No; you had no terminals there.

A. Had some.

Q. Not on your tracks that you owned?

A. Not in this fire; no, sir.

Q. If, under the arrangement you had with the Terminal Association, or any custom or practice which prevailed there at this place, you were in possession of these cars—I am not stating that they were—if you were in possession of these cars, you would have settled this damage?

A. No, sir; not in that case.

Q. Why?

A. Because, in my opinion, they are responsible.

Q. You made an agreement with the Terminal Association for the use of certain tracks, didn't you?

A. Yes, sir.

Q. That was done because you didn't have tracks to break up trains and put cars on?

A. That is one reason.

Q. Now, regarding these as your tracks in that view—I don't say they were—and you had not yet delivered a waybill or made delivery of these cars to the Terminal Association, then you would have paid for these cars, wouldn't you?

(Objection.)

A. No, I will be frank with you; I will answer and say that I would not have paid for the cars. You are not asking for my opinion as to the legal status. If you are asking what I would have done, I will say distinctly, I would not have paid for the cars.

Q. It is a custom between all railroads, if a car of the St. Paul railway is destroyed on your track, you pay for it?

A. Yes, sir.

Q. And that is on the ground that you have possession of the car, and in accounting for the loss of it you account to the owner and pay for it; that is a well-understood custom, isn't it?

A. Yes, sir.

Q. If these cars destroyed were on tracks you had regarded as yours in the conduct of business here, you would say that rule applied?

A. I don't.

Q. But you claim that they were not in your possession, not on your tracks, and therefore you say you are not liable?

A. Yes, sir.

Q. How would it have been, supposing those cars had been left on the "Y," by your engine, as the train came in?

244 A. The situation would have been precisely the same.

Q. So, if a car had been destroyed by fire there, you would claim the association liable?

A. Yes, sir; you understand those tracks were not devoted exclusively to my use.

Q. I understand for the use of all trains. Would it make any difference in your opinion, if the custom was at East St. Louis that the Terminal Association never would move a car or make a delivery of a car until they got a waybill from your agent, and no waybill had been given for any car in controversy?

A. I think not.

Q. Then you based your opposition to these claims entirely on the fact that these cars, when they arrived at East St. Louis, had been in the train in which they came, were broken up by the Terminal Association, and put on tracks under your agreement?

A. Base our views on this, that the Terminal Association doing that work was conducting the operations, and that they had the right; as much a part of their duties as a common carrier.

Q. As shippers of this barley, you were bound to provide facilities at East St. Louis?

A. Don't know.

Q. Don't you think you were?

A. I know short of facilities at a great many places.

Q. Do you think you can get rid of the responsibility?

A. Don't know.

Redirect by Mr. WILSON:

Q. Referring to this agreement, did you make that originally?

A. I did not; this agreement was in effect when I took the road.

Q. Ever enter into any arrangement with reference to an agreement, directly or indirectly, after you came in charge?

A. No, sir, except in reference to the modification of the agreement after the fire. I think the Terminal Association wanted it distinctly understood they were not to be responsible for future fires.

Mr. HANSON: So you had operated under this up to the time of the fire?

A. So far as I know.

Q. Were you consulted as to the particular tracks used by the Terminal Association in storing and handling these cars?

A. Don't understand we were.

245 Q. Did you have control or direction?

A. None whatever, except that they recognized our orders as to further movements of the stuff.

Q. You considered your duty fully discharged as a common carrier when you delivered these cars on these "Y's" to the Terminal Association?

A. Yes, sir.

Q. I understand from Mr. Calvert that this agreement, so far as the practical administration is concerned, particularly so far as charges are concerned, has been modified. Were you ever consulted by the Terminal Association as to the modification of this agreement?

A. No, sir.

Q. I am requested to ask you whether the insurance companies accepted your claim?

A. No, sir, they haven't.

Q. Under what arrangement as to terminal facilities is your business transacted at Peoria?

(Objection.—Entirely incompetent, immaterial and irrelevant to the issue.)

The MASTER: I don't see its pertinency.

Q. The witness, Beacham, stated in the course of his examination that this business of the Chicago, Milwaukee and St. Paul was delivered to the Rock Island and Pacific, and they hauled it to Peoria and turned it over to the Peoria and Pekin Union railway, who delivered it to us. Now, I want simply to show by Mr. Bosworth the relations of the Peoria and Pekin railway to the C., P. & St. L. at that end, and the circumstances under which we received this business, when our liability began.

(Objection.)

The MASTER: You have a right to show continuous passage, but I don't know that custom has anything to do with it.

Q. And I desire to show that the Chicago, Peoria and St. Louis railroad is one of the proprietary lines of the Peoria and Pekin

railway, in connection with several other railroads, and then ask the witness whether, if these cars had been burned upon the tracks of the Peoria and Pekin Union railway, under the custom by which the business is done, he would be held himself responsible; and the further fact, I expect to show by the witness, that the Peoria and Pekin railway is an association similar in objects, organization and operation with that of the St. Louis Terminal Association.

(Objection.)

The MASTER: I don't think your proposition is broad
246 enough. If you expect to show that such is a custom, that is another thing; but if you are going to show a custom of the Peoria and Pekin Union railway, I don't think it is pertinent to this investigation at all.

Q. I expect to show not only what the custom there is, but that the custom at Peoria is precisely what prevails at St. Louis and other important terminals in the union, and that we do at St. Louis and did there precisely what we did on receiving property at Peoria, and what other railroads did.

The MASTER: If you are going to establish a common custom, the question may be answered.

Q. The question is as to the arrangements under which, and the methods under which your business is handled at the Peoria terminal, where you received this particular business from the Chicago, Milwaukee and St. Paul, and where your liability began?

(Objection, as incompetent and immaterial, asking the witness for a legal opinion; objection, and exception.)

A. The arrangement was under a contract, a written contract, between the Peoria and Pekin road on the one side and ours, as successors to another railroad company, party of the second part, and under that contract they furnish certain terminal facilities for us and trackage between Peoria and Pekin, Illinois. The methods under which this particular business is handled are that the Rock Island and Peoria Railroad Company would deliver a car of barley destined to East St. Louis on the Peoria and Pekin Union tracks in the city of Peoria, set aside for that class of transfer business, and the Peoria and Pekin switch-engine would put it into our train, and while there is some dispute as to that point I think it is well settled and admitted that the Peoria and Pekin road is responsible for loss, especially by fire or a wreckage, after such cars or property were transferred, or during the performance of the switching, from the Peoria and Pekin tracks to our train.

Q. Your liability began then when the cars were turned over to you and ties onto your engine?

A. Yes, sir.

Q. Are you acquainted with the relations of the Terminal Association at Chicago, Indianapolis, Louisville and Cincinnati, if there are any such associations, to the lines doing business over them, and if so, the custom under which business is done between the tenant or

proprietary lines and the Terminal Association itself; where is the point of liability as between the Terminal Association and tenant or proprietary lines?

(Objection.—Improper, immaterial and irrelevant as to what the practice is at other points. Not for the witness to determine the point where liability begins or ends, but for the master and the court; objection and exception.)

247 A. My answer is that the Terminal Association in railways of the class you have mentioned, as to such the beginning of liability on the part of such roads and association is, when the cars are burned on their rails or in their custody, and it would end with respect to the Terminal Association when the delivery back again is made to the same line.

Cross-examination by Mr. HANSON:

Q. Isn't it a universal custom whenever there is a car delivered from one company to another, consigned to a point beyond, before that car is taken by the company to which it is delivered and moved on to its destination, a waybill accompanies that car and is delivered to the delivering company?

A. I can't say it is a universal custom.

Q. How would the moving company know what to do with a car, without a waybill?

A. Might take the direction of the agent. I will state it is undoubtedly generally the case.

Q. And at all junction points are not junction reports made by the company delivering the car, made to the company owning the car?

A. Very generally; yes, sir.

Q. The testimony here is, as to the cars in controversy, you furnished no waybill or junction report.

Mr. WILSON: How could there be any if the cars were burned up?

Q. Do you consider that at all in determining when the liability of one company ends and the other attaches?

A. Not to a very great extent—not at all, if the car itself has been actually turned over, accepted and handled.

Q. Set on the track awaiting a waybill, would you consider the company making that delivery had the same control over it and the same direction?

A. Yes, sir.

Q. Until this direction had been given by means of the waybill there would not be a complete delivery?

A. I will say in answer to that, there has been some effort made to agree upon that as a dividing line, but it has not been agreed upon so far as I know, and is not a controlling factor in the case, the delivery of the waybill; I don't think that could be taken at East St. Louis as settling the question.

Q. Better leave that to the court.

A. I thought you were asking about the practice of railroads.

Mr. WILSON: He was asking about that, and the reason is, goes upon that theory.

248 Q. Do you know, at East St. Louis it appears, when a train comes in and is broken up and the cars put on the tracks set apart; do you know those cars would stand there till you deliver a waybill to the Terminal Association?

Mr. WILSON: Call your attention to the fact, he claims under a particular agreement, and that pursuant to it certain tracks were set aside; isn't it the fact that no tracks were designated?

Q. I am speaking of tracks commonly used.

A. I would like to be frank with you in answer to these questions. My belief is no particular tracks were specially set aside and our business confined exclusively to them.

Q. Don't claim any exclusive use. Those tracks commonly used, witnesses say.

A. I don't understand we had any control over them; if it suited their convenience to move them into the other corner of the yard they would have done so.

Q. Wouldn't have moved them to their destination until they got a waybill?

A. Not till they got instructions.

Q. They would still be held there?

A. Yes, sir.

Q. So they were subject to your order to that extent?

A. Yes, sir.

Redirect by Mr. WILSON:

Q. Subject to your order or the order of the consignee?

A. Well, I would answer that by saying, the St. Louis Terminal Association up to that point would not have recognized any order the consignee would have made directly to them and we would not have attempted to make a movement without the consignee who would order through our agent in East St. Louis.

Mr. HANSON: And you would deliver to the Terminal?

A. Yes, sir.

Q. Was that a part of your contract shown by the waybills offered now here by which you undertook to transport these cars as part of the through line from Wykoff to East St. Louis, or was it for the convenience of the consignee and in accordance with the understanding between the Terminal Association and yourself that the cars were to stand there until such time as the consignee should communicate what particular point they desired the cars to be delivered to?

A. What do the bills of lading say?

Q. From Wykoff to East St. Louis with the name of the consignee in St. Louis.

A. I should say that without any special understanding of
249 knowledge about the business, our agent would naturally have taken the cars or had them eventually brought on the

transfer tracks, which would be near our freight-house in East St. Louis. It was known in all these cases the cars were subject to movement by rail by some railroad company and put in this yard convenient for that additional movement.

Q. Was that separate and distinct, or was it a part of the original contract by which you undertook the freight?

A. I should say not a part of the original contract; the contract provided for transportation to East St. Louis. We had fulfilled that part of it and we had discharged our obligation.

Cross-examination by Mr. HANSON:

Q. Why did you pay part of the charges for taking over the bridge if you had not contracted to take it over to St. Louis; you paid part of the charges didn't you?

A. I am not certain about that, but I think the understanding was, the rate was classed to St. Louis and East St. Louis and none of those charges on any of the cars at St. Louis.

Q. Of course those had not been taken over, but cars that had been taken there you had contracted as to the charges?

A. I presume we had.

Redirect by Mr. WILSON:

Q. Anything you wish to add?

I will ask you, as some reference has been made to the Master Car builders' rules, question asked Mr. Beachman as to the course of a practice in business and Mr. Beacham said he was a member—whether there is anything in the rules as you understand them, or as they have been communicated to you, that impose any obligation upon you?

A. Well, in the first place my understanding of the Master Car-builders' Association is that it is an association for educational purposes primarily, and that its rules and regulations are in the shape of recommendations, and I do know that either the articles of the constitution of the association or the by-laws particularly state that their rules, findings and conclusions shall not be binding upon the members of the association; in reference to membership in the association on the part of the C., P. & St. L. I will say that the corporation, the C., P. & St. L., prior to my connection with it as receiver, as I understand it, was a member of the Master Car-builders'
Association, but as receiver and since the receivership there
250 has never been any new membership taken out for the receiver, neither have we denied our membership in it, since our connection with it, if we have any.

Q. Did you propose to put in a copy of the rules?

Mr. HANSON: No, sir.

Cross-examination by Mr. HANSON:

Q. I will ask the witness if since he has been receiver he has not submitted questions under the rules of the Master Car-builders' Association.

A. No, sir; to the best of my knowledge none have been submitted by the receiver.

Q. By the employés or officers of your company?

A. Not affecting disputes arising since the receivership. I know some cases have been passed upon by the committee on arbitration. Those cases, however, were cases which happened prior to my appointment. If any since September, 1893, I don't know.

Q. But claims arising prior have been submitted since your receivership?

A. I think probably that is so.

Redirect by Mr. WILSON:

Q. I will ask you to state what the rule is, as you understand it, in the Car-builders' Association as to liability for cars destroyed?

Mr. HANSON: The rule itself is the best evidence.

The MASTER: If there is such a rule I should think it would be the best evidence.

Q. Not prepared to say that there is, but I propose, either this evening or in the morning, to offer the last publication of the Master Car-builders' Association, and I think it will be found that that is the rule; but it may not be so, and in that case I will ask the witness the question. I will ask if there is such a rule, and if he knows what the rule is as to liability?

A. There is a rule in the Master Car-builders' code of rules.

Q. Have you a copy of the rules?

A. I can get a copy.

Q. I will ask you to do so, to read out of the rules that one and make it a part of your evidence?

Adjourned to 9 o'clock a. m.

251 *Testimony of Bluford Wilson.*

BLUFORD WILSON, sworn.

Direct by Mr. WARREN:

Q. State your name and profession?

A. Bluford Wilson, attorney-at-law.

Q. What connection have you with the Chicago, Peoria and St. Louis railway or its receiver?

A. I am vice-president of the Chicago, Peoria & St. Louis Railway Company and its general counsel, and I am solicitor for the receiver of the Chicago, Peoria & St. Louis, and have been since the receivership was instituted in September, 1893.

Q. State what you know about the removal of the wreckage and the salvage of the fire at East St. Louis, October 28, 1894.

A. My attention was called to the fire by Mr. Bosworth, the receiver, who invited me to a conference with him upon the subject. The details of the losses and their extent had been mainly received, and we recognized at once that our little company—that the owners of property lost or damaged—that a disaster of more than ordinary

magnitude had happened. This conference was held soon after the fire occurred, some time in the month of October or about the first of November, and as the result of the conference I was instructed by Mr. Bosworth to proceed to St. Louis and confer with Mr. Ramsey as to the best method of dealing with the salvage if there was any to be made, and with the subject of repairs to cars and so forth. I met Mr. Ramsey at his office in St. Louis, and without going into all the details it is enough to say we both recognized that the disaster was one of more than ordinary magnitude, and without admitting upon either side the liability of our respective companies, he on his part expressly disclaiming any liability on behalf of the Terminal Railroad Association, and I on behalf of the receiver, with equal directness and emphasis, disclaiming any responsibility whatever on the part of the receiver, we agreed that in the interest of the owners, and in the interest of all parties who had suffered loss by the fire, the proper thing to be done was to at once proceed to make whatever salvage could be made, and mitigate by all the means in our power the extent of the loss or damage; after some further conference as to the relations of the two companies, it was agreed in substance, as shown by the statement of Mr. Bosworth on yesterday and as shown by Mr. Ramsey's letters, that he on his part would handle the wreck at East St. Louis in connection with our employees, and that it would be absolutely without prejudice or
either side. This arrangement was made for the reasons I
252 have stated, and I hope in a large and proper spirit, for the
protection of the property of those with whom we were dealing; leaving the question of ultimate liability, as between the Terminal Association and the receiver, to be determined by the courts upon the evidence and the law of the case.

Testimony of W. H. Calvert.

Mr. CALVERT, recalled.

Direct by Mr. WILSON:

Q. You stated yesterday, in the course of your examination, as to these barley shipments coming to us over the C., M. & St. P. railway, and probably as to certain other classes of property, the shipments in question were permitted to stand in the yards at East St. Louis all the way from two hours up to four weeks or more; I will ask you to explain how this happened.

A. Well, the class of freight allowed to stand there consists of grain, barley in particular, hard coal, pig iron and salt and other commodities that are held on what we term the market; in other words, forwarded there, not in all cases but as a rule, held for the accom-odation of the consignee, which is virtually for the interest of the shipper; the business being held on commission to await an advance of the market; in other words, it comes in there, and if the market is all right when it arrives, they sell it immediately, but as a rule hold it until the market suits them. It is in other words a port of entry for that class of goods at St. Louis.

Q. And is so held to await the state of the market for the accommodation of the consignee?

A. For the accommodation of the consignee, which is virtually accommodation for the owner, it being handled on commission.

Q. How long has this barley business been carried on, and how long had that custom of shipment been in operation in East St. Louis?

A. Well, since the C., P. & St. L. opened business in East St. Louis, which was in the winter or early spring, December or January, 1891; I can't say whether any barley was handled that spring after they opened or not. I was connected with the company as cashier, commencing May, 1891, and until about the first of November, 1891, and there was considerable, although I am not able to say how much, arrived there during the fall. The next April I went back there as agent, and the barley business in particular has been one of our largest commodities that we have handled every season since.

253 Q. Where has this barley been sold, as a rule?

A. As I stated the other day, ninety per cent. of it is sold to consignees in St. Louis, and the balance of it—I wish to correct that last statement—not sold to consignees, but to various firms in St. Louis by the consignees; the balance of it sold to various parties in and about St. Louis. The consignees have representatives who make regular trips to the various yards in and about East St. Louis daily for the inspection of this grain, and samples are secured from the cars and taken on 'change, or on the board of trade, if you choose, and there the grain is sold by sample; unless in some cases where a sale is made and a certain grain is guaranteed, and in that case, as I said yesterday, that is barley that goes straight through without stopping.

Q. I understand you to say these inspecting agents are agents of the consignees?

A. Agents of the consignees; that is, the firms to whom the barley is consigned in the body of the waybill—commission.

Q. Do you know the firm of Teichman?

A. Yes, sir.

Q. Teichman & Company; what is their business?

A. Grain and commission business.

Q. Do they observe that course of business you have referred to in reference to barley shipments?

A. Yes, sir.

Q. What proportion of the barley went through that firm?

A. I should say that the Teichman Commission Company handled fifty per cent. of all the barley that had arrived the last season on our line.

Q. If you know, please state whether or not the C., M. & St. P. people either through their freight department or through the department of administration, knew of the course of business at St. Louis in reference to these shipments; and if so, your means of knowledge of the knowledge they must have had as to the course of business—bills of lading or waybills——

Mr. HANSON: If they had, waybills would show it; better let the waybills speak.

A. I can't answer that; in fact, I don't know whether they are familiar with the manner of handling the business or not. I presume they might have been, because it has been running so long.

Q. The name Teichman & Co. appears on some of the waybills—possibly some of the bills of lading, copies of which have been put in evidence; by whom was that name placed there?

A. Well, the waybills—placed there by the agent of the Chicago, Milwaukee and St. Paul Railroad Company; as to bills of
254 lading, I cannot answer; bills of lading generally made out by the shipper and receipted by the company's agent receiving the goods.

Q. Teichman & Co., a well-known firm?

A. Yes, sir.

Q. Any means of knowing as to whether well known in the region of country where the C., M. & St. P. gets freight?

A. No means, I presume, except through their reputation as a large firm or commission-house.

Q. Number of shipments?

A. Well, that is pretty hard for me to say.

Q. How does it compare with other houses in St. Louis?

A. Well, the Teichman Commission Company, I would say, ranks equal if not ahead of all the grain commission firms.

Q. I ask you if the Orthwein Company is a grain commission firm?

A. Yes, sir.

Q. Do they transact in the same way?

A. Yes, sir.

Q. Who is the firm of L. Lenke & Co.?

A. They are engaged in the same business.

Q. Manage their business in the same way?

A. Yes, sir.

Q. As far as inspecting the grain and so forth and sales?

A. Yes, sir.

Q. What you have stated there is the general custom with other merchants handling these barley shipments?

A. Yes, sir.

Q. You may state whether you have prepared from the records of your office or from other sources a memorandum of cars burned in the fire of October 28, 1894, showing the date when they were received?

A. Yes, sir.

Q. The date when they were received at East St. Louis?

A. Yes, sir.

Q. I will ask you to look at that memorandum and state whether that covers that?

A. That is a correct statement as far as it goes, but it does not include some of the cars which were burned; does not include the hard-coal cars.

Q. Does it include all in this controversy of the C., M. & St. P., or these grain cars?

A. Yes, sir; my best recollection is that it included everything in that fire destroyed loaded with barley.

Q. This memorandum states correctly, does it, the date of the arrival and deposit of the cars on the Y's in the yard of the Terminal Association at East St. Louis?

255 A. Yes, sir.

Q. I will ask you to attach that to your testimony.

(Objection as incompetent and irrelevant to these issues.)

Q. Do you object to it on the ground that it is a copy?

Mr. HANSON: No.

(Paper marked "Exhibit 6.")

Cross-examination by Mr. HANSON:

Q. When waybills were made out by the receiver at East St. Louis for barley consigned to St. Louis and other points to which the Terminal Association was to take it, where were the waybills made out, at your office?

A. Yes, sir.

Q. Delivered by your office to the Terminal Association?

A. Yes, sir.

Q. That would be waybills of all cars going to some other points than East St. Louis?

A. Yes, sir; except such as were to go to the Wiggins ferry, in which case the waybills would be delivered to the Wiggins ferry.

Q. None of the cars in controversy here, barley, went by the way of Wiggins ferry?

A. No, sir.

Q. Did you know that Teichman and Company and Orthwein and Company were merely acting as commissionmen for the sale of the barley?

A. Didn't know it until after this trouble came up; the way I found out was under the arrangement between the C., P. & St. L. and the Terminal Association as to the care of the salvage—called on Teichman Commission Company to interview them——

Q. If you didn't know it prior to the fire that is all right.

Mr. WILSON: I think he has a right to explain.

A. I went to them with a view of having them handle the salvage of the barley in the cars damaged. They wouldn't take hold of it on account of the shipper; stated they were merely handling the business on commission, and without the shippers would authorize them to handle it on their account, they would only handle it for the good of whom it might concern, and under that arrangement we placed the salvage in their hands.

Q. Did the receiver pay the commission for the sale of this salvage?

A. Commission deducted from the proceeds of the sale.

Q. So he accounted to you for the salvage?
A. No, sir; he accounted to the shippers, on the ground, better get a half loaf than none at all, with my consent.

256 Redirect by Mr. WILSON:

Q. In my questions yesterday, if I didn't particularly ask you as to the cars covered by this schedule, which you have this morning appended to your testimony and which covers their date of arrival at East St. Louis, I now ask you whether or not you desire to have it understood that your statement as to the care, custody and control of those cars, from the dates of their deposit on the three Y's marked on the blue print, being in the Terminal Railroad Association, applies to this list?

(Objection.—Incompetent, immaterial and irrelevant and asking for the witness' conclusion as to a legal liability, or which company had legal possession of cars; that is for the master and the court and not for the witness to say.)
The MASTER: I admitted the others; I will admit this.
(Exception by intervenors.)

A. I think my statement of yesterday answers that point.
Q. Do you apply it to these cars?
A. As far as the physical control, care and custody is concerned.

Mr. WILSON: I now desire to state to the master that this is all the evidence I am prepared to offer this morning. Since the adjournment last night I have taken steps, by telegraphing through our agents at East St. Louis, to ascertain the whereabouts of the witness Malone, and I am advised that he left East St. Louis on Monday of this week to go to the State of Indiana, in response to a telegraphic summons stating that his mother was sick. He is employed at East St. Louis, and will probably be back in a week, after which time I have no doubt I shall be able to secure his personal attendance as a witness. As to the witness Keemer, who was here yesterday, in the employ of the Bluff line, and had to leave to take a train out, I have been unable since yesterday to speak with Mr. Fuller, the general superintendent, as to the day when he can spare Keemer. I will settle that at our conference and get his attendance probably within eight or ten days, or about the same time that I can secure the attendance of Malone. I am also advised of other testimony from St. Louis, additional, and which has been discovered since yesterday. For these reasons I ask the master to adjourn this hearing until the twenty-fifth day of September. I would name an earlier date than that, but I am imperatively required to be in New York from the tenth to about the twentieth, and the twenty-fifth is the earliest day I can certainly promise to go on.

Mr. HANSON: This is a great disappointment to us. We have been trying and trying to get this matter to a hearing;
257 spoiled my summer vacation; and I don't think since I have consented that the statements of these witnesses should

be received as evidence, that there ought to be a further continuance to receive their testimony.

The MASTER: But the Major states that he has additional evidence.

(Further hearing postponed, provisionally, that is unless some other date named, to October 2, 1895.)

(Here follows diagram marked p. 257.)

258 EXHIBIT 4.

Letter from J. Ramsey, Jr., to C. H. Bosworth.

ST. LOUIS, *Nov.* 6, 1894.

Mr. C. H. Bosworth, gen'l mngr. C., P. & St. L., Springfield, Ills.

DEAR SIR: Will you kindly arrange for clearing the tracks, which have been occupied by you as a yard at East St. Louis, and are now blocked by the burned and damaged cars belonging to your company, or in your possession at the time of the fire? We desire to repair the tracks as soon as possible.

I understand from you that you are willing to remove the burned and damaged cars and contents, without delay, providing that by so doing you do not waive any rights which you may have, or claim to have, to hold this company responsible for the loss resulting from the fire.

I am willing to agree that in removing this property, in order to secure as great salvage as possible from the damaged contents of the cars, that your action in so doing shall not prejudice you in any manner, so far as this company is concerned.

Very truly yours, J. RAMSEY, JR.,
General Manager.

EXHIBIT 5.

Letter from J. Ramsey, Jr., to C. H. Bosworth.

ST. LOUIS, *February* 7, 1885.

Subject: Cars destroyed at East St. Louis.

Mr. C. H. Bosworth, receiver & general manager C., P. & St. L., Springfield, Ills.

DEAR SIR: I beg leave to acknowledge receipt of your favor of January 31st, in which you advise me that you will proceed to make certain repairs on cars damaged by fire at East St. Louis, but that you will hold the Terminal Railroad Association responsible for the cost of such repairs.

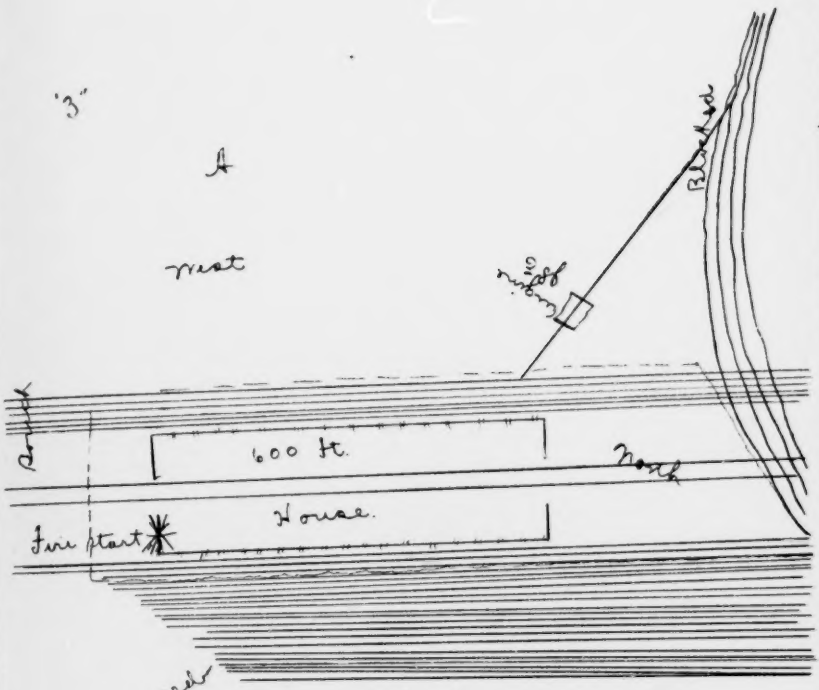
In reply to this notice I beg to advise you—as I have heretofore done—that this company denies any responsibility whatever for any damage occurring to cars while in your possession at East St. Louis, either by fire or otherwise, and we deny that these cars were in the

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possession of the Terminal Railroad Association at the time the damage was received.

While I advise you thus of our position in the matter, I desire to state that your action in repairing these cars shall not in anywise be construed by this company as affecting the rights of either parties in the premises.

Respectfully,

J. RAMSEY, JR.,
General Manager.

For insurance file.

259 EXHIBIT 6.

Date of Arrival of Cars.

Number.	Initial.	Date.	Time of arrival.
37506	C., M. & St. P.	10-27	6.40 p. m.
12336	C., M. & St. P.	10-26	12.30 p. m.
2598	C., M. & St. P.	10-25	1.45 p. m.
4126	C., M. & St. P.	10-25	1.45 p. m.
3728	C., M. & St. P.	10-26	12.30 p. m.
18126	C., M. & St. P.	10-26	12.30 p. m.
10720	C., M. & St. P.	10-26	12.30 p. m.
6842	C., M. & St. P.	10-26	12.30 p. m.
36088	C., M. & St. P.	10-26	12.30 p. m.
4268	C., M. & St. P.	10-26	12.30 p. m.
7552	C., M. & St. P.	10-26	12.30 p. m.
1100	C., M. & St. P.	10-27	7.55 a. m.
15254	C., M. & St. P.	10-24	5.00 p. m.
32986	C., M. & St. P.	10-25	1.45 p. m.
20022	C., M. & St. P.	10-25	1.45 p. m.
680	C., M. & St. P.	10-10	5.45 p. m.
10814	C., B. & Q.	10-25	1.45 p. m.
11962	C., B. & Q.	10-25	1.45 p. m.
14385	C., B. & Q.	10-25	1.45 p. m.
1919	C., B. & Q.	10-25	1.45 p. m.
20975	St. L., B. & S. I.	10-28	6.55 a. m.
1004	R. I. P.	10-28	2.57 p. m.
12611	C., C., C. & St. L.	10-27	7.55 a. m.
3433	C., N. O. & T. P.	10-26	12.30 p. m.
38108	C. M.	10-26	12.30 p. m.
1154	M. & N.	10-27	7.55 a. m.
43064	C., M. & St. P.	10-25	1.45 p. m.
43222	C., M. & St. P.	10-25	1.45 p. m.
11836	C., M. & St. P.	10-28	1.45 p. m.
33090	C., M. & St. P.	10-28	1.45 p. m.
34574	C., M. & St. P.	10-25	4.00 a. m.
32194	C., M. & St. P.	10-26	2.45 a. m.

Date of Arrival of Cars—Continued.

Number.	Initial.	Date.	Time of arrival.
43030	C., M. & St. P.....	10–25	4.00 a. m.
12	C., M. & St. P.....	10–25	1.45 p. m.
178	M. & N....	10–24	5.00 p. m.
7286	C., M. & St. P.....	10–24	5.00 p. m.
16802	C., M. & St. P....	10–25	8.20 p. m.
46648	C., M. & St. P.....	10–24	5.00 p. m.
2430	C., M. & St. *Y*.....	10–25	4.00 a. m.
3218	C., M. & St. P....	10–27	7.55 a. m.
3524	C., M. & St. P.....	10–26	6.30 p. m.
260			
6364	C., M. & St. P.....	10–28	6.55 a. m.
10071	C., M. & St. P.....	10–16	3.45 a. m.
10536	C., M. & St. P.....	10–27	7.55 a. m.
12886	C., M. & St. P.....	10–28	6.55 a. m.
15944	C., M. & St. P...	10–28	6.55 a. m.
16502	C., M. & St. P.....	10–25	1.45 p. m.
17272	C., M. & St. P.....	10–27	7.55 a. m.
31098	C., M. & St. P.....	10–27	7.55 a. m.
31204	C., M. & St. P.....	10–27	7.55 a. m.
33134	*B.*, M. & St. P.....	10–27	6 40 p. m.
34908	C., M. & St. P.....	10–25	4.00 a. m.
46992	C., M. & St. P.....	10–27	7.55 a. m.
1232	C., M. & St. P.....	10–25	4.00 a. m.

Statement by Mr. Wilson.

On Wednesday, October 2, 1895, pursuant to adjournment, before Stuart Brown, master in chancery of the United States court for the southern district of Illinois, reappeared the parties in the intervention by the Chicago, Milwaukee & St. Paul Railroad Company and others, intervenors represented, as before, by Messrs. Hanson and Cary, and the receiver by Messrs. Wilson and Warren; when the following further proceedings were had, Volney Hickox acting as stenographer:

Mr. WILSON: I regret to say, your honor, that we have not been able to obtain the testimony of Teichman and others in St. Louis for today, as we had anticipated, and I am therefore reluctantly compelled to ask for a further continuance. We have up until last night had every assurance from these witnesses that they would be present today. These assurances were given to Mr. Poland, our commercial agent at St. Louis, and were based upon provision made by us for the expenses and transportation of these gentlemen. They reside outside the district in St. Louis, and hence cannot be reached

by subpœna. Relying upon their assurances—and they are all men of repute and good business standing and character in St. Louis—that they would be personally present and give us the benefit of their testimony, we took no steps to take the depositions of the witnesses.

We expect to prove by these witness- that the St. Louis Terminal Railroad Association personally solicited this particular barley business, originating on the Chicago, Milwaukee and St. Paul road, on which this controversy is pending; that these solicitations by the Terminal Railroad Association were made to all the barley dealers in St. Louis, to whom the particular consignments of barley are made, which are now in litigation; that the Terminal Railroad Association, as an inducement to barley dealers and shippers,
261 agreed to hold the cars on their tracks at East St. Louis free of car service, and offered other facilities in and about their yards at East St. Louis, by which the St. Louis Terminal Railroad Association succeeded in securing the business of all of the shippers; by that term, I mean the consignees and shippers except the business of the John Wall Commission Company, whose business was being handled by the Wiggins Ferry Company, a competing line with the St. Louis Terminal Railroad Association, and that at a later day they also secured the business of this last-named firm. And that the solicitation was made in the interest of the Terminal Railroad Association, for the express purpose of having the business sent down the east side of the Mississippi river, so as to give them the benefit of the transfer across the river from East St. Louis to St. Louis, in competition with lines west of the Mississippi river.

We believe that on an adjournment of one week from this day we can secure the depositions of these witnesses, and will do so, and for these reasons, so far as the absence of the testimony of the witnesses from St. Louis is concerned, we move your honor for an adjournment for the purpose of taking the depositions of these witnesses at St. Louis on such a day as may be most convenient to the master and to opposing counsel.

We also find it necessary to ask an adjournment by reason of our failure to secure a proper stipulation from opposing counsel, covering the testimony of the agents of the Chicago, Milwaukee and St. Paul railroad, at the various points where this freight was consigned; and also the testimony of the shippers themselves, covering the important fact of the assent of the shippers to the stipulations in the waybills or bills of lading, all of which contain express provisions against liability for loss by fire, after the arrival of the goods at their destination.

We expect to show, by the testimony of the shippers and of the agent that this business was a large business; had been carried on for years, and that all the details, including of course, the important detail of notice of the particular stipulations covered by the waybills and the assent of the shipper thereto, were known and agreed to.

I think this testimony is important and material, and we hope to

be able to secure it within a reasonable time, if such opportunity is given us.

We had hoped, although we were late in making application to Mr. Hanson, that we would be able to obtain the stipulation from him of the assent of the shipper to the contents of the contract of carriage.

Mr. HANSON: We oppose this continuance, of course, and I
262 think properly and rightfully so. There has been an adjournment for fully a month to enable the receiver and his attorneys to prepare their testimony for this hearing. I think that is ample time to have done something in that direction.

Now in reference to the testimony of people at St. Louis, in respect to the arrangement made by the Terminal Railroad Association, by which it would hold these cars of barley and so forth, rather than to postpone this hearing at this time, I will consent that the witnesses, if here, would testify as Mr. Wilson has stated. So I do not think a continuance should be granted on that application.

In regard to the other part of the application of getting the testimony of the agents of the company, at various points where shipments originated, and of the shippers at those points, I do not think the application should be granted upon that. There is no diligence shown to secure this testimony, and your honor has no assurance that any such testimony can be had. In reference to the stipulation, I was only asked—hardly intimated—whether I would stipulate or not; received the letter yesterday morning. I immediately inquired about the facts, with reference to this part of the request, and I am willing now to stipulate what the facts are, and I will do that for the purpose of avoiding a continuance of this hearing.

So I think under the circumstances, where counsel have had so much opportunity of getting this testimony from the agents and the shippers and this testimony at St. Louis, it is hardly fair to the parties that a continuance should be had, especially when I am willing to concede that the witnesses at St. Louis, if here, would testify substantially as Mr. Wilson has stated he expects to prove by them. Certainly no diligence can be shown, with respect to the witnesses at St. Louis, nor more especially as to procuring the testimony of the St. Paul Company's agents.

Mr. WILSON: I don't think that is fair; we used all possible diligence as to the persons at St. Louis.

Mr. HANSON: Well, with regard to the agents.

Mr. WILSON: There may be some reason there.

Mr. HANSON: There is nothing shown here, that he can make any other arrangements that will secure their attendance.

Mr. WILSON: My intention is to take the depositions.

Mr. HANSON: Go to St. Louis?

Mr. WILSON: Yes, sir.

Mr. HANSON: For the purpose of expediting this hearing, I am willing to concede, if the witnesses were here, they would testify substantially as has been stated.

Mr. WILSON: What stipulation are you willing to make with reference to shippers?

263 (At this point an informal conference intervened, the conclusion announced as follows:)

Mr. HANSON: To expedite matters, it is stipulated that the witnesses, Otto Teichman, Henry Grieve of the John Wall Commission Company, L. Lemke and Charles Orthwein, at St. Louis, if present, would testify substantially as has been stated by Mr. Wilson.

I would like now to introduce a little testimony. Under the stipulation which was entered into between the parties, filed August 27, 1895, in reference to the claim of the C., M. & St. P. Railway Company, for the value of the cars lost in the fire, it was stipulated that each one of the cars was consigned as per bill of lading and waybills introduced in evidence. A portion of such bills of lading and waybills have been introduced in evidence in behalf of the claim of the C., M. & St. P. Railway Company, and I now offer in evidence the remainder of such station receipts or bills of lading and waybills, in pursuance of the stipulation and in behalf of the claim of the C., M. & St. P. Railway Company. If bills of lading are obtained hereafter, covering these same shipments, they may be offered in evidence in place of or in connection with the station receipts which are now put in evidence.

Mr. PHELPS recalled.

Direct by Mr. HANSON:

Q. When you were on the stand before, in going through the list of car numbers, I see I have omitted to ask you in reference to C., M. & St. P. cars, numbered fifteen thousand two hundred and fifty-four; one hundred and seventy-eight; seven thousand two hundred and eighty-six; forty-six thousand six forty-eight; twelve thousand six hundred and eleven; and three thousand four thirty-three; whether any waybill had been delivered to the Terminal Association by the receiver of the C., P. & St. L., or his agents, covering these cars, or whether any such waybill had been received by the Terminal Association for any of these cars prior to the time of the fire at East St. Louis.

A. No, sir; no waybills received.

Q. For any one of these cars mentioned?

A. No, sir.

Q. You have made examination?

A. Yes, sir; I looked at the records.

Q. And you find no waybill has been received covering any one of these cars mentioned?

A. No, sir.

264 *Testimony of G. W. Phelps.*

Cross-examination by Mr. WARREN:

Q. Upon what do you base your knowledge?
A. Examination of our records.
Q. Who made the records?
A. Clerks in our office and employés of the company.
Q. Original records or transcripts?
A. Original records.
Q. What is your employment with the Terminal Association?
A. I am local agent at East St. Louis.
Q. Do you know whether or not those records are correct?
A. I am satisfied they are.
Q. Upon what do you base your satisfaction?
A. On one ground, that the records in these cases have never been disputed.
Q. By whom?
A. By anybody.
Q. What opportunity would there be for anybody to dispute them?
A. Every opportunity in the world, I should think, if there was any object.
Q. What would be the object of disputing them?
A. Don't know that I can answer that.
Q. Has there ever any occasion arisen to dispute?
A. What?
Q. The records.
A. At East St. Louis?
Q. In this particular case?
A. No, sir; not that I know of.
Q. Never have been tested?
A. Not in this particular case, so far as I know.
Q. Any records you made yourself?
A. No, sir.

Redirect by Mr. HANSON:

Q. Were they made in the regular course of business at your station?
A. Yes, sir.
Q. In the transaction of the business of the receiver at that place?
A. Yes, sir.
Q. Made up daily?
A. Hourly, you might say; made up when the waybills were received, or very soon afterward.

265 Q. So, when a waybill was received from the receiver it would be noted in your record, is that true?
A. Yes, sir.

Cross-examination by Mr. WARREN:

Q. Original record in which these waybills would be noted, or a transcript?
A. Books we made at the time.
Q. Only one record made of that information there?
A. Only one record in our office.

Mr. WILSON: I now wish to offer a little testimony.

Testimony of Aug. A. Poland.

AUG. A. POLAND sworn.

Direct by Mr. WILSON:

Q. What is your official relation to the receiver of the Chicago, Peoria & St. Louis railway?
A. Commercial agent at St. Louis.
Q. How long have you held that position?
A. Nearly two years.
Q. That covers the period of the fire at East St. Louis?
A. Yes, sir.
Q. I will ask you if you have had occasion recently to look into the matter of the shipment of quite a large number of cars containing barley, from the C., M. & St. P. railroad through the Rock Island and Peoria road, between October 22d and November 1st, 1894?
A. Yes, sir; I have.
Q. You may tell the master what was the situation in reference to the ability of the Chicago, Peoria and St. Louis Railway Company to handle at East St. Louis the shipments of barley at the time referred to, and what action, if any, you took in connection with the Terminal Railroad Association of St. Louis as to handling said barley?

(Objection.—Incompetent, immaterial and irrelevant. Entirely immaterial as to these claims what arrangements were made between the Terminal Association and the receiver in reference to handling that business. Whatever arrangements were made should not, in the nature of things, affect in any way any of these claims; arrangements made for their own convenience, I suppose.)

266 Q. My answer to that is, that the owners of this barley, the consignees at East St. Louis, parties representing and acting for the shippers knew of the particular situation, and having knowledge of the situation, consented to the shipment of the barley under the circumstances that then environed the Chicago, Peoria and St. Louis railway.

Mr. HANSON: I still object for the same reason.

The MASTER: It may lead up to something admissible. As one of the *res gestæ*, I will let it go in.

(Exception by counsel for intervenors.)

Q. State what the facts are.

A. On the 22d of October, 1894, the yards at East St. Louis were pretty well crowded with barley.

Mr. HANSON: You mean the Terminal Association yards?

A. Yes, sir; and in fact the tracks along the road were well stored with barley; and on the 22d of October we received a message addressed to Mr. Bushnell, general freight agent of the C., P. & St. L. This message was signed by the general freight agent of the Rock Island and Peoria, Mr. Stackhouse, stating they had 150 cars of barley they were holding for our line, and demanding we should make arrangement to take them at once or they would turn them over to one of our competitors. Mr. Bushnell was out of the city, and I took the matter up with the Terminal Association, asking if they could take the barley and store it and handle it. At first they stated they could not take it; crowded, and could not take care of it; but when I told them if they did not take care of it we had an arrangement with the Wiggins Ferry Company to take care of the barley, during the day they arranged to take care of fifty cars; agreed to take the cars and hold them. We immediately ordered the cars in.

Q. Did you afterwards take care of the rest of the hundred and fifty?

A. Yes, sir; ordered the fifty cars in on the 22d, on their agreement to take care of and store them.

Q. You may state whether or not this arrangement continued up to the date of the fire, October 28?

A. It did, yes, sir.

Mr. HANSON: Where were these fifty cars you ordered?

A. In the hands of the Rock Island & Peoria. I think at Peoria or on their line.

267 *Testimony of W. H. Calvert.*

Mr. CALVERT recalled.

Direct by Mr. WILSON:

Q. When, and under what circumstances did you report the cars lost or damaged by fire at East St. Louis to Mr. Bradley, the car accountant of the Chicago, Milwaukee & St. Paul railroad?

A. On request from Mr. Bradley by wire, dated October 30th, received at eight o'clock a. m., and the report was made on regular statement form.

Q. On what date?

A. On October 30th; and then November 1st, immediately gotten

up as soon as possible—mailed to Mr. Bradley November 1st, copy of the report.

Q. Did your report to Mr. Bradley made within two days after the fire cover all the cars lost or damaged?

A. I can't say; made a very thorough check of it, and I am under the impression, although not positive, there was one and possibly two cars omitted—not C. M. & St. P. cars—which I had not succeeded in getting information on at that time.

Q. Your report substantially made to include the barley cars?

A. Yes, sir.

Q. Know whether your report was received by Mr. Bradley?

A. I presume it was; never got report that it was not; I have it in my hand.

Q. Handed to you by me?

A. Yes, sir.

Q. You heard the questions asked Mr. Poland with reference to these hundred and fifty cars of barley between October 22d, and November 1st?

A. Yes, sir.

Q. Do you have any knowledge of the situation with regard to those cars?

A. I have no direct knowledge. I was advised by him or by wire over Mr. Bushnell's name that they would accept those cars on October 22d; at a later date, two or three days later, I also made arrangements with the Terminal Association to accept twenty-five cars to be held at their yards, in Madison, or at the yards of the St. Louis Bridge Company, which had then passed into the hands of the Terminal Association. That was made and the cars ordered in October twenty-seventh.

Q. Who do you mean arrangements were made with by which they agreed to take the cars?

A. The Terminal Railroad Association.

268 Cross-examination by Mr. HANSON:

Q. These cars had not yet arrived at East St. Louis when you made this arrangement?

A. No, sir; up at Madison.

Q. You don't know whether any of these you have in mind were any of the cars in controversy here?

A. I have not checked to see and I only state it to show that this barley was brought in with their knowledge and held there by their consent and under their solicitation.

(It was then informally agreed, as to further testimony to be introduced on behalf of the receiver from agents and shippers along the line of C., M. & St. P. railway, that a couple of important stations should first be visited, by a representative of the receiver, and testimony taken if desired, conclusion of the hearing meanwhile suspended for the purpose; and that in two weeks parties should reap-

pear before the master to close the hearing unless by agreement an earlier date should be set.)

The following are the written insertions made in C., M. & St. P. waybills of which the foregoing is a true blank form as the same were introduced in evidence and made exhibits:

EXHIBIT TO TESTIMONY.

Blank Forms of Waybills.

Exhibits in connection with testimony offered by intervenors, hereto attached.

Chicago, Milwaukee & St. Paul Railway.
From La Crosse to East St. Louis.
W. W. C. Co. L. Lemke & Co.
St. Louis, Mo. Barley 40,650 # $28.46 Paid.
Via Rock Island & K. S. E. line.
Free a/c transit.
Rate applied to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
From Savannah to East St. Louis, Ills.
To Teichman Com. Co. St. Louis.
Barley 32,250 # $22.58 Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car # 31098 St. P. Savannah to East St. Louis, Oct. 19, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 30,000 # $21.00 Paid.
Rate applies to St. Louis.

269 Chicago, Milwaukee & St. Paul R'y.
Car # 33134 St. P. Savannah to East St. Louis, Oct. 21, '94.
Teichman Commission Co.
St. Louis, Mo. Barley 36,300 # $25.43 Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car # 2420 St. P. Savannah to East St. Louis, Oct. 21, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 30,100 # $21.07 Paid.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car # 31204 St. P. Savannah to East St. Louis, Oct. 23, '94.
Teichman Com. Co.
St. Louis, Mo. Barley 44,380 # $31.07m.
Rate applies to St. Louis, Mo.

Chicago, Milwaukee & St. Paul R'y.
Car # 46992 St. P. Savannah to East St. Louis, Oct. 23, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 50,470 # $35.33.
Rate applies to St. Louis, Mo.

Chicago, Milwaukee & St. Paul R'y.
Car # 15944 St. P. Savannah to East St. Louis, Oct. 23, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 44,450 # $31.12.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car # 6364 St. P. Savannah to East St. Louis, Oct. 23, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 30,000 # $21.00.
Rate applies to St. Louis.

Chicago, Milwaukee & St. Paul R'y.
Car # 12886 St. P. Savannah to East St. Louis, Oct. 23, 1894.
Teichman Com. Co.
St. Louis, Mo. Barley 30,050 # $21.04.
Rate applies to St. Louis.

270 Car St. P., # 38108 Oct. 10, 1894.
Via Rock Island.
Freight forwarded from Ossian, Iowa, to East St. Louis.
Teichman Com. Co.
St. Louis, Mo. Bulk barley 40,000 # $60.00.

Car UL # 10071 Oct. 27, 1894.
Via Rock Island.
Freight forwarded from Lake City to St. Louis.
L. Lemke & Co.
St. Louis.
W. W. C. 30,150 # $51.26.

Car St. P. # 24908 Oct. 17, 1894.
Via Rock Island.
Freight forwarded from Lake City to St. Louis.
W. & C. to L. Lemke & Co. Barley 40,000 # $68.00.

Car # 10536,
Via Rock Island to Sept. 6, 1894.
Freight forwarded from Lake City to St. Louis.
P. B. M. to L. Lemke & Co. Barley. 30,500 $51.58.

Car St. P. # 3218, Oct. 6, 1894.
Via Rock Island, J. S. E.
Freight forwarded from Lake City to St. Louis.
P. B. M. to L. Lemke & Co. Barley. 30,000 # $51.00.
Car M. & N., # 1232.

La Crosse to East St. Louis, Oct. 16, 1894.
W. W. C. Co. L. Lemke & Co.,
St. Louis, Mo. Barley. 50,400 # $35.28.
Via Rock Island.
Rate applies to St. Louis, Mo.

CONDITIONS AND RULES

FORMING PART OF THE WITHIN CONTRACT.

1. The Corporation will not receive or carry any Bank Bills, Drafts, Notes, Deeds Contracts, evidences of property or other writings, or be responsible for their loss or injury.

2. No Conductor, or other agent of the Corporation, is authorized to take charge of Bank Notes, Money or other valuable papers or things, for, or on account of the Company, or to receive any perquisites or reward, for himself or for the Company, on or for such articles.

3. No Gold or Silver Coin or Bullion, or manufactured articles of gold and silver, or Jewels' Watches, Pictures, Plated Articles, Statuary, Musical Instruments, Glass, Silks, Laces, will be carried by the Corporation, for the loss of which it will be responsible, unless with such articles when delivered, as also delivered a memorandum in writing, stating the character and kind of articles and their value, and unless the proper extra price for the carriage and responsibility for such articles be paid.

Carriages and Heights, Show Cases, Machinery, Stoves and Castings, Marble, Looking Glasses, Mineral Acids, Boreal Potatoes, all Liquids put up in glass or earthenware, Cabinet Ware and Furniture will only be taken at the owner's risk of fracture or injury during the course of transportation, and the loading and unloading thereof, unless specially agreed to the contrary.

4. Gunpowder and combustible articles of any description will be taken only on special terms and rates. If found secreted among other goods they will be taken from the cars and stored. In case of damage in consequence of the same being so secreted, the shipper or consignor will be held liable.

5. Articles will not be received for transportation unless properly packed in suitable CASES BOXES, BALES or PACKAGES, and each must be well and clearly MARKED with the name of the CONSIGNEE and of the STATION where they are to be delivered; otherwise they will not be receipted for, in which case no damage for loss or misdelivery will be paid. The Company will in no case be responsible for loss, injury or damage which might have been avoided by skillful and more careful and sufficient packing, or which occurs without the negligence or fault of the Company or its agents. All property is subject to cooperage when necessary.

Goods in bundles will not be considered as properly packed, and the Company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of Lemons, Oranges or other fruit, if not covered with canvas will be made.

6. The Corporation will not be responsible for damage occasioned by delays from storms, accidents or unavoidable causes; or by decay or injury to fruit, fish, dressed hogs, dressed poultry or other perishable property, or from injury to property produced by frost, Lead, or the elements, and the Corporation will not be liable for the non-delivery of such property in any certain time, nor in time for any particular market.

7. The charges on lettered marble must always be prepaid.

The charges on perishable property must always be prepaid.

7. The Corporation will not undertake or agree to carry property by any particular train, nor in time for any particular market, nor are they to be responsible for loss or damage arising from any delay or stoppage, however occasioned, but they will forward the same with as reasonable dispatch as the general business of the Corporation will permit.

8. The Corporation will only be liable as warehouse-men, after the property has been placed in their freight depot. But no loss or damage to property by fire, while in their freight depot or storehouse, the Company will not be liable.

9. Storage, at customary rates, will be charged for all property not taken from the warehouse within one day after arrival.

10. The Corporation will not be responsible for loss or injury happening to or occasioned by unruly or vicious horses, cattle, swine or sheep, nor for accidents to the same in loading, carrying or unloading the same, nor for any damages however caused, to stock or animals of any description, transported or carried upon their railway, or in their cars or vehicles.

11. The Corporation will not be responsible for loss or damage to any article by fire or otherwise, the bulk of which renders it necessary to be forwarded in open cars.

12. Goods or property consigned to any place of the Company's line of road, or to any point or place beyond its termini, will be sent forward with as reasonable dispatch as the general business of the Corporation, at its warehouse within mentioned, will admit, by a carrier or freight-man, when there are such known to the station agent at said warehouse, willing to receive the same unconditionally, for transportation, the Company acting for the purpose of delivery to such carrier or freight-man, as the agents of the consignor or consignee, and not as carriers. The Company will not be liable or responsible for any loss, damage or injury to property after the same shall have arrived at the within-mentioned Company's station for delivery to the owner, consignee or to the connecting carriers or freight-men for transportation.

13. No station agent or clerk has authority to alter or vary any of these Rules and Conditions.

All carload freight shall be subject to a minimum charge for trackage and rental of $2.50 per car for each 24 hours detention or fractional part thereof after the expiration of 48 hours from its arrival at destination, and after the expiration of 72 hours, this Company shall be at liberty to unload and store the freight in a warehouse of its own or unload and deliver to a warehouseman, and the Consignee or Consignee shall pay the C., St. P., M. & O. Company the expense of unloading and warehousing same, and for such expense this Company shall have a lien upon the freight in addition to its own freight charges and back charges.

Chicago, Milwaukee & St. Paul Railway Co.

No. _____

Shipped by _____

Consigned to _____

Agents _____

_____ 189_

_____ Agent.

No. _____ Station _____ 189

RECEIVED from _____

in apparent good condition

MARKS AND CONSIGNEE.	DESCRIPTION OF PROPERTY.	WEIGHT.

Way-bill Exhibits.

249 - 250

271

187A

272 The following are the written insertions made in the station receipts, of which the foregoing is a true blank form, as the same were introduced in evidence and made exhibits:

Waybill Exhibits.

SAVANNAH, *Oct.* 23, 1894.

Received from B. R. Gr. Co.
To Teichman Com. Co.
St. Louis, Mo. Barley.

31204	44,380
46992	50,470
15544	44,400
6364	30,000
12886	30,050

W. G., *Agent.*

SAVANNAH, *Oct.* 21, 1894.

Received from B. R. Gr. Co.
Teichman Com. Co.
St. Louis, Mo. Barley.

St. P., 33134	36,320
2430	30,100

W. G., *Agent.*

SAVANNAH, *Oct.*, 1894.

Received from B. R. Gr. Co.
Teichman Com. Co.
St. Louis, Mo. Barley.
St. P., # 31,098 30,000 #
W. G., *Agent.*

SAVANNAH, *Sept.*, 1894.

Received from B. R. Gr. Co.
Teichman Com. Co.,
St. Louis, Mo. Barley.
St. P., # 3524 32,250 #
W. G., *Agent.*

LA CROSSE, *Oct.* 12, 1894.

Received from W. W. C. Co.
Teichman Com. Co.
St. Louis, Mo. Car 20022 41,100
Barley.
J. C. H., *Agent.*

273 LA CROSSE, *Oct.* 12, 1895.

Received from W. W. C. Co.
Teichman Com. Co.,
St. Louis, Mo. Barley. Car # 32986 40,400
J. C. H., *Agent.*

LA CROSSE, *Oct.* 23, 1895.

Received from W. W. & Co.
St. Louis, Mo. Barley.
Car #1100. 30,005#
J. C. H., *Agent.*

OSSIAN, *Oct.* 10, 1895.

One car, U. L., 10071.
Received from Gilchrist & Co.
Teichman Com. Co.
St. Louis, Mo. Bulk barley. 40,000#
W. F. C., *Agent.*

LAKE CITY, *Oct.* —, 1895.

Received from Wilson & Cargill.
One car, St. P., 3218.
L. Lemke & Co.
St. Louis. Bulk barley. 30,000#
F. H. B., *Agent.*

LAKE CITY.

Received from P., B. & M.
L. Lemke & Co.
St. Louis. Bulk barley. 30,000#
F. H. B., *Agent.*

LAKE CITY.

Received from P. B. & M. St. P. car #10536.
L. Lemke & Co.
St. Louis. Barley. 30,000.
F. H. B., *Agent.*

LAKE CITY.

St. P. car. #34908.
Received from Wilson & Cargill.
L. Lemke & Co. Barley. 40,000#
F. H. B., *Agent.*

1877

253-254

274

Certificate of Evidence.

Way-bill Exhibit.

Form 181.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

ALL RAIL

THROUGH FAST FREIGHT LINE.

BONDED.

J. H. HILAND, General Freight Agent, Chicago.

La Crosse, Oct 16 1894

No. 2178

Received from W. W. Cargill Co.

in apparent good order by the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, the following described packages marked and numbered as per margin, subject to the conditions and regulations of the published tariffs of said Company, to be transported over the line of this Railroad to Red Island

and delivered after payment of freight or like vend order to Sept. 26 a company or carrier (of the same are to be forwarded beyond the lines of the Company's road) to be carried to the place of destination; it being expressly agreed that the responsibility of this Company shall cease at this Company's depot, at which the same are to be delivered to such carrier; but this Company guarantees that the rate of freight for the transportation of said packages shall not exceed rates noted in margin of this bill of Lading and charges advanced by this Company. **Provided contents of packages are correctly stated in Railroad Receipts (original and duplicate,) on which this Bill of Lading is based,** subject to the following conditions:

"This Company shall not be responsible for the loss of packages the contents of which are unknown; for the leakage of any kind of Liquids, breakage of any kind of Glass, Carboys of Acid or Articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Carriages, Furniture, Musical Instruments of any kind, Packages of Paper or for loss or damage on Hay, Hemp, Cotton of any article where such receipt is necessary to transport on open cars, or for damage to perishable property of any kind, occasioned by delays from any cause, or change of weather, nor for any loss of weight of Grain, or Coffee in bags, or Rice in barrels, nor for loss or damage on the lakes and rivers unless it can be shown that such damage or loss occurred through the negligence or default of the Agents of the Company. It is further especially agreed that for all loss and damage occurring in the transit of said packages, the legal remedy shall be against the particular carrier or forwarder only in whose custody the said packages may actually be at the time of the happening thereof, it being understood that the said **CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,** assumes no other responsibility for their safe carriage or safety than may be incurred on its own road. All packages subject to charge for Demurrage if necessary.

All inclosed freight shall be subject to a minimum charge for truckage and rental of $1.00 per car for each 24 hours detention or fractional part thereof after the expiration of 48 hours from the arrival at destination, and after the expiration of 72 hours, this Company shall be at liberty to unload and store the freight in a warehouse of its own or thereof and deliver to a commission and the Consignee or Consignor shall pay the C., M. & St. P. Ry Company the expense of unloading and warehousing same, and for such expense the Company shall have a lien upon the freight in addition to its own freight charges and back charges.

MARKS AND CONSIGNEE.	No. PKGS.	DESCRIPTION OF PROPERTY AS GIVEN BY CONSIGNOR.	WEIGHT. Subject to Correction
L Benoit & Co Ste. Louis, Mo		Buck Barley Std. 1 C M. St P 17272	40650
		Buck Barley Std. 1 M & N 1232	50400

Via Red Island and

A. S. Line

Each article comprising this shipment is hereby declared to be subject to, and governed by, that classification and Rules as published by Railroads, and to the rates properly belonging to such Classification, and the rate as per the above or below shall only apply to such goods as are included in the class opposite or against which the rate is so written in

ORIGINAL.

RATES

From

To

If 1st Class ..... cts. per 100 lbs

If 2d Class ..... cts. per 100 lbs

If 3d Class ..... cts. per 100 lbs

If 4th Class ..... cts. per 100 lbs

If 5th Class ..... cts. per 100 lbs

If 6th Class ..... cts. per 100 lbs

If Class .... cts. per 100 lbs

Charges Advanced, $

J Hustbahn

B

Agent.

275 *Testimony of E. J. Tull.*

Circuit Court of the United States for the Southern District of Illinois.

MERCANTILE TRUST COMPANY OF NEW YORK, Complainant, *vs.* CHICAGO, PEORIA AND ST. LOUIS RAILWAY Company, Defendant. } Consolidated Cause.

In the matter of the intervening petitioners, The Chicago, Milwaukee and St. Paul Railway Company, Carr, Ryder & Engler Company, S. Y. Hyde Elevator Company, and others.

On this 10th day of October, 1895, the receiver of the Chicago, Peoria and St. Louis Railway Company appeared by Mr. P. B. Warren, its attorney, and the petitioners by Mr. Burton Hanson, their attorney, for the purpose of taking the depositions of Mr. S. Y. Hyde, of the S. Y. Hyde Elevator Company, Mr. E. J. Tull, secretary of the W. W. Cargill Company, and Mr. J. C. Hietbahn, agent at La Crosse of the Chicago, Milwaukee and St. Paul Railway Company, before Helmus W. Thompson, notary public in and for La Crosse county, Wisconsin; and it is now stipulated that the depositions of these parties may be taken with the same effect and force as if taken upon notice duly and regularly given, and that the depositions when so taken may be filed herein and used in evidence the same as if taken before the master in chancery, Mr. Stuart Brown, of Springfield.

It is further stipulated that these depositions when taken and signed may be sent to Mr. J. T. Jones, the clerk of said court at Springfield, Illinois, without any formal certificate attached thereto by the notary public before whom the depositions are taken.

Mr. E. J. TULL, being first duly sworn, testified as follows:

By Mr. WARREN: Please state your name.

A. E. J. Tull.

Q. Are you connected with the W. W. Cargill Company, and if so in what capacity?

A. Secretary and treasurer.

Q. How long have you been secretary and treasurer of the W. W. Cargill Company?

A. Ever since its organization.

276 Q. Were you secretary and treasurer then during the months of October and November, 1894?

A. Yes, sir.

Q. Are you secretary of the W. W. Cargill Company which is petitioner in this cause?

A. Yes, sir.

Q. Will you kindly state the steps which your company takes, or

which it did take in the particular instance of shipping barley to the Teichman Commission Company in cars numbered 32986–20222, 1100 and 15254?

A. Well, I suppose with those cars the same steps were taken that we usually take. I do not now just remember the steps taken, but our method was in the afternoon of the days the cars were loaded to send a boy to the elevator to bring down from the elevator the notices of the shipments that had been made that day; and it was the elevator man's business to send us a slip to the depot giving the car number, destination, and name of party to whom the grain was to be shipped. He left that with the agent of the St. Paul Company, which were their instructions and directions as to shipment.

Q. You speak of sending the boy to the elevator; is that your elevator?

A. Yes, our elevator where our grain is shipped.

Q. At what time do the bills of lading come into your possession?

A. Well, we were not in the habit of getting bills of lading for the cars unless we wanted to draw against the grain shipped. I don't know as we ever drew against the Teichman Company, but it was sometimes necessary where we did not know the parties shipped to, and did not know whether they would honor the draft to take a bill of lading to show that the grain had been shipped. I don't think there were any bills of lading delivered to us on the cars shipped to Teichman & Company. We did not usually require them at the time of shipment.

Q. Did you get any receipts from the railroad company?

A. No, we did not.

Q. Did you have anything or receive anything to show that you had delivered to them cars for shipment?

A. I don't think we had.

Q. How did your consignee know that cars would be coming to him?

A. We notified him every evening when the boy came down from the elevator; he got down about five o'clock. He leaves notification with the railroad agent where to ship this stuff. He comes to the office and makes out a notification to the party to
277 whom the stuff is to be shipped, giving the car number, date of shipment, etc.

Q. And that is sent to the consignee?

A. Yes, sir.

Q. What is sent to the consignee?

A. The car number, the date of shipment, the amount of grain shipped, etc.

Q. Simply in the form of a letter?

A. We have a kind of form for that.

Q. A form?

A. Yes, sir.

Q. Will you attach one of those notices or forms which you use to your deposition and make it a part of it?

A. Yes, sir.

(Notice attached and made a part of the deposition, marked Exhibit "B.")

Q. Did you ever in any of your shipments receive station receipts from the railroad company?

A. Yes, sir.

Q. Are those receipts filled out entirely in the railroad office?

A. Yes, sir.

Q. I will ask you if you ever did receive any of those station receipts for these cars and contents now in controversy?

A. It seems to me we did; we got them some time, I believe, since the suit was commenced and sent them to the party at Springfield, I believe to be used.

Q. Those were received by you after the loss occurred?

A. Yes, sir.

Q. Did you make any objection to them in any way?

A. The receipts?

Q. Yes.

A. Not that I know of.

Q. Were there at any time any bills of lading issued for these cars?

A. Not to us; I believe the bills of lading are the documents by which the cars are moved; the railroad company hold those.

Q. Who did you make your contract of carriage with? And who did you in the special instance of these cars?

A. I do not just understand. Of course we shipped all our stuff by the St. Paul road; we are on that road.

Q. Don't you ship by contract of some sort?

A. Written?

Q. Any kind?

A. Mutual *nu*derstanding, I guess.

Q. Who do you make your rates with and how are those rates ascertained?

278 A. The rates of the company are all printed on circulars, and they are sent to us as shippers.

Q. And you make your shipments then on those circulars?

A. Yes, sir.

Q. Have you one of those circulars?

A. We have got hundreds of them; they are regular freight tariffs; they are not personal contracts. They are general notifications of what the freight is to different points. If we do not understand the rate to a certain point we call up the agent and ask him, and he gives us the rate. That is all there is of a contract.

Q. How long have you been shipping over the Chicago, Milwaukee & St. Paul road?

A. Ever since the company was organized; of course, this company before was W. W. Cargill & Brother. They have been shipping probably twenty years.

Q. And during that time you have taken these station receipts as set forth in the evidence introduced for the intervenors before the master on September 3 and 4, 1895. (Copy shown witness.)

A. Always.
Q. Did you ever make any objection to them?
A. No, sir.

By Mr. HANSON:

Q. Mr. Tull, have you ever read this station receipt?
A. Why, I don't know.
Q. Do you now, or have you ever known, what its contents are as to limitation of liability of the railroad company in case of loss or damage?
A. No, sir.
Q. Is there any limitation of liability of the railroad company in these station receipts, or commercial bills of lading, you are not aware of it?
A. No, sir; anything that is supposed to affect the liability of the railroad company to my knowledge has always been given specifically, like on flax. At certain rates, we ship at owner's risk, and that matter is brought up and personally called to our attention.
Q. Has anything ever been called to your attention specifically in respect to limitation of liability of the railroad company in the shipment of barley?
A. No, sir.
Q. Was the only understanding that you ever had of this station receipt, or commercial bill of lading, on any shipment you have made, that in any delivery of barley to the railroad company,
279 you understand that the railroad company was to safely carry it and safely deliver it to its destination?
A. Yes, sir.
Q. And you never had any other understanding or arrangement?
A. None.
Q. Now you say you have a great many times taken these station receipts or commercial bills of lading; do you get them personally or Mr. Cargill, or are they simply received and filed away in the office, or are they sent to the consignee?
A. Neither Mr. Cargill nor I get them personally; the boy brings them up if they are to be used to draw against, and they are either attached to the draft or forwarded by mail.
Q. In these shipments in question to Teichman & Company at St. Louis, no station receipts or commercial bills of lading were issued at the time of shipment.
A. I do not think there were.
Q. I understand that it was after the fire occurred that you obtained them from the railroad company for the purpose of perfecting your claim against the railroad company?
A. That is the time we got them.
Q. You received them and sent them right to Springfield, do you understand?
A. I think that is the place.
Q. Are you certain whether you sent them to Springfield to the

claim agent there, or the claim agent of the Milwaukee road at Chicago?

A. I am not sure, but I think it was at Springfield.

Q. Were these station receipts or commercial bills of lading required by the claim agent of the railroad company for the purpose of showing that you had delivered the grain to the company, and the quantity, etc., to perfect the claim?

A. It was to perfect the claim, but the object or part of the claim I don't remember. Whenever we made a claim, which we did every time we had property destroyed—and we have often had property burned or destroyed before it got to St. Louis—we got those receipts.

Q. Because they were called for?

A. Yes, sir.

Q. By whom?

A. I don't know; but I think likely the railroad companies. We have never had to prosecute a claim by law.

Q. I understand that when you had some barley to ship, for instance to St. Louis, as this barley in question was shipped, when it was loaded in the car your clerk would make out what was called a shipping bill?

280 A. Yes, that is it.

(Shipping bill marked Exhibit "A" shown to witness.)

Q. That would be filled out by your clerk?

A. Yes, sir.

Q. And delivered to the agent of the railroad company?

A. Yes, sir.

Q. And that in most instances you would take no station receipt or bill of lading for your shipment?

A. Yes, sir.

Q. And only in instances where you drew against the shipment you would take a station receipt, or bill of lading?

A. Yes, sir.

Q. And in the shipment in question in this controversy you received no receipt of any kind until after the fire?

A. Yes, sir.

Q. And when they were made out they were made out by the agent of the railroad company?

A. Yes, sir.

Q. You have no knowledge now of ever having seen the station receipts or commercial bills of lading that were in fact made out after the fire for these cars?

A. No, I am not sure.

Q. And you say you have never read them or examined them to see what the contents was as to the limitation of liability of the railroad company in case of loss or damage?

A. I presume I have read over the backs but I am not sure, but I have no idea what the back contains. I never read them with the idea of ascertaining the liability of the railroad company or anything of the kind. Our object was to show the party that we

had shipped the grain; the receipt shows to the party that we draw against that the grain had been shipped.

Q. And you took them for that purpose?

A. Yes, sir.

Q. You were asked about a contract for shipment, and you spoke in reference to rates. Was that the only subject that you contracted on, as to what the rate would be? So far as you had an understanding between yourselves and the railroad company in regard to shipments, was it in regard to what the rate would be?

A. That is all; we never have any contract.

Q. I will ask you, Mr. Tull, were you aware at the time of the shipments in question, or at the time the station receipts or commercial bills of lading were delivered to you after the fire in question, that there was any restriction or limitation contained in those receipts or bills of lading of the liability of the railroad companies in case the barley should be lost or damaged?

A. No, sir.

281 Examination by Mr. WARREN:

Q. You say you have read these receipts?

A. No; I did not say I had. I said I could not swear I had not. I cannot swear whether I have or not. I don't remember. I know I have seen thousands of them and I may have read them, but I don't remember; I could not swear that I ever did.

Q. You also said that the receipts were made out in the office of the railroad company, and you did not know whether they were forwarded by the railroad agent to Springfield or to Chicago, or whether they were forwarded by you?

A. No; I did not say that.

Q. What did you say?

A. Whether I saw them personally or whether the company sent them.

Q. Your company sent them?

A. Some of the clerks.

Q. And you think they were sent either to Springfield or Chicago?

A. I don't know the place; I know we had to get receipts.

Q. As a matter of fact didn't you send them to Teichman & Company at St. Louis?

A. I don't remember.

Q. These particular shipments were made by you with the understanding, and just as all your previous shipments were made, were they not?

A. I presume so.

Q. I mean previous shipments of barley. Don't you know whether or not it was; or would anybody else in your company know?

A. I don't believe anybody would know whether they were made as all our previous shipments were made. Some shipments may have been made differently, but I know of no reason why these should have been different from other shipments.

Q. And as far as you know, they were not?

A. No, sir.

Q. Please state under what arrangements with the consignees this barley was shipped; what was your course of business with them.

A. We shipped the barley, notified the consignee of the shipment as to grain, weight, etc., car number, and in course of time the consignee rendered us an invoice of this grain and remitted the proceeds.

Q. I mean these particular shipments?

A. These barley shipments are sent out and the consignees
282 of course give us an invoice of it, and when a sufficient time has elapsed for returns, and we do not get them we write to the consignee to hurry him up, and if anything has happened to the grain and it does not reach its destination, tracers are sent out after the cars. In this case of course no grain ever reached Teichman and Company and we never had any proceeds.

Q. Did you sell this grain to Teichman & Company, or were they acting for you as your agents to sell it for you on 'change?

A. We actually sold it to them the same as to any commission-house; he probably sold the grain afterwards, but he was responsible to us.

Q. You sold it to him at a certain price?

A. Per bushel; yes.

Q. Were you aware that it was the custom of Teichman & Company to hold that grain on tracks at East St. Louis subject to the market?

A. No.

Q. What was your understanding about that, that the grain was sold immediately as it arrived there?

A. That the grain was sold by Teichman & Company before we shipped it; the way they do business they wire us that their bid is so much. We wire back that we cannot accept their bid, but must have a cent a bushel more, and probably we get a message from them, "Unable to sell your barley at price offered." That may end it for that day, and probably the next day they will wire, "Bid you so much," when they can sell it for the price offered. Our understanding is that this barley is always all sold before it is shipped.

Examination by Mr. HANSON:

Q. But you consider it your barley until there is a delivery of it and it is accepted?

A. Yes, sir.

Q. Say you make a sale to be delivered at St. Louis, and until the barley is delivered there, there is no sale?

A. No, sir.

Q. You are the Cargill & Company, who are the present owners of this claim?

A. Yes, sir.

Q. This barley in question was shipped under the railroad company's established rates from the point of shipment to St. Louis?

A. Yes, sir.

283 Q. And there was no diminution of the rate or less charge given you for this shipment than the rate to all shippers?

A. No, sir.

E. J. TULL.

Testimony of S. Y. Hyde.

Mr. S. Y. HYDE, being first duly sworn, testified as follows:

Examination by Mr. WARREN:

Q. You may state your name.

A. S. Y. Hyde.

Q. And what relation you sustain to The S. Y. Hyde Elevator Company, petitioner in this cause?

A. The president and manager.

Q. Please state what steps were taken by you or your company to deliver the barley in question to the Chicago, Milwaukee & St. Paul Railway Company?

A. We shipped it from the station in the country, get a receipt for it, and it is brought here to the elevator at La Crosse, and when it is properly prepared, consign it to St. Louis or wherever it is to go. Our elevator foreman loads the cars for St. Louis, and a list of the cars that he has loaded during the day is sent to the agent of the C., M. & St. P. R'y, and he is instructed to forward those cars to the consignee at St. Louis. Then we notify the consignee of the car numbers, the weight and sample (using form attached and made part of this deposition, marked Exhibit "C"), of the barley, whether it is A or B, or whatever it is. I will state for your information that this barley is all sold by sample to St. Louis; we never consign any there. It is all sold by sample.

Q. How do you mean?

A. We make up a sample of barley and send it by express to St. Louis, and the barley is sold on that sample. When it is delivered, it must be delivered as up to that sample.

Q. Do you ever, or do any of your agents and employés fill out the blanks in these station receipts which you speak of?

A. Do you mean in our office here? Not that I am aware of; it has never been done here to my knowledge; but these receipts do not go to St. Louis, they simply come here to La Crosse.

Q. You have branch houses out along the line, I understand?

A. Yes, sir.

Q. And you have barley stored there?

A. We buy it there.

Q. You do not have any elevators there?

284 A. O, yes.

Q. When you make a sale, do you order that barley down to La Crosse and then reship it?

A. Not the identical barley; the barley is coming all the time to La Crosse, but they do not know where it is going to. Our agents on the line don't know where the barley is to go.

Q. They send it to you and you reship it from here?
A. Yes, sir.
Q. In reshipping it from here do you get any bills of lading or station receipts?
A. No, sir; not naturally; that is not the custom. We might if we were sending to parties east of Chicago where they do not know us and they require a bill of lading; but in this case never took bills of ladidg; we were shipping on open account.
Q. Have you ever shipped any barley and received bills of lading or station receipts?
A. From the elevator here?
Q. Yes.
A. No, sir; not to my knowledge, not to St. Louis. We may have shipped some to Cincinnati. I don't remember that we ever called for a bill of lading.
Q. Would you know if you had?
A. I could not tell without looking the books up to see if a bill of lading accompanied the draft, which could only be proven then by a letter.
Q. You may state if you ever did receive a bill of lading or station receipt, if you ever made any objection to it, or protest.
A. I never have made any objection to receipts.
Q. I hand you this paper and ask you to state what it is. (Indicating.)
A. It is a claim for the barley that was burned; five cars of barley.
Q. This barley in question?
A. Yes, sir.
Q. I wish you would state whose claim it is.
A. It is the claim of the S. Y. Hyde Elevator Company.
Q. Who made it?
A. It was made out by the secretary of our company.
Q. Do you know his handwriting?
A. Yes, sir.
Q. Is that his handwriting?
A. Yes, sir.

Mr. WARREN: I offer that in evidence for the purpose of establishing the fact that the handwriting in that claim for barley is the same as the handwriting in the body of the station receipt offered in evidence by petitioner.

285 Q. Mr. Hyde, I will call your attention to the station receipt dated October 16, 1894, from the S. Y. Hyde Elevator Company, as offered in evidence for petitioner before the master, and ask you to state if you are familiar with that handwriting?
A. Yes, sir; I am.
Q. Whose handwriting is that?
A. The handwriting of Mr. Clark, who was secretary of our company at the time; he is not working for us now.

Examination by Mr. HANSON:

Q. Do you know when this station receipt, which you say is in the handwriting of Mr. Clark, was made out?

A. I have no knowledge of it except the date of it there.

Q. Do you know whether it was made out after the fire or before?

A. I cannot tell you, but my impression is it was after the fire.

Q. Made out for the purpose of presenting the claim?

A. Yes, sir.

Q. And was asked for either by the consignee or the claim agent of the railroad company?

A. It was required by somebody to establish our claim.

Q. Mr. Hyde, you were asked if you ever protested or made any objection to any of these receipts which were received by you for shipments. I will ask you if at that time or at any time before that time you had read the contents of these receipts?

A. No, sir.

Q. Did you know at that time, or have you known at any time what they contained?

A. No, sir.

Q. Were you at any time aware that there were any limitations or restrictions as to the liability of the railroad companies for liability in case of loss or damage of the property contained in them?

A. I never was.

Q. In these shipments which you made of this barley in question, did you pay the regular established tariff rates on the barley?

A. Yes, sir.

Q. No concession of rates in any way; you paid the rate which all paid?

A. Yes, sir.

Q. And it was the rate charged through to St. Louis?

A. Yes, sir.

Q. Is this the first time you have ever seen this station receipt which you say was made out by Mr. Clark?

286 A. Yes, sir; this is the first time.

Q. Did you know up to the present time that it had been made out?

A. I did not know of it.

Q. And you only now know by looking at it?

A. He was the proper person to make out the claim, or was when he was in our employ; he is not in our employ now.

Q. And it was made out for that purpose?

A. Yes, sir.

Q. You do not keep the station receipts in your office, and never have, do you?

A. Not that kind; we keep our own station receipts in our office.

Q. But these you do not keep, nor do not make out?

A. No, sir.

Q. And if this was made out in your office, it was made out for the purpose of making up the claim?

A. That is it; yes.

Q. Because it was required by the consignee or the railroad company as proof of the delivery of the property to the shipper?

A. Yes, sir.

Q. Have you ever had any understanding with the railway company in any way, by which its liability should be limited in case of loss or damage to your property?

A. No, sir.

Q. No talk about it in any way?

A. No, sir.

Q. What has been your understanding when you have delivered barley to the railway company, consigned to St. Louis and other points, as to your rights in case the property was lost or damaged, or failed to reach its destination?

A. We have always considered the railway company responsible to us for the delivery of goods we shipped.

Q. Had you knowledge of any limitation or restriction of liability, or any different agreement by which they would not be responsible?

A. No, sir; we have never even dictated the route by which they should ship our grain to St. Louis.

Q. You simply delivered the property to the St. Paul Company with the understanding that it should be delivered at St. Louis?

A. Yes, sir; and they were to deliver it at St. Louis over any route they saw fit.

Q. That is about the only understanding you ever had about it?

287 A. That is the only understanding.

Q. I suppose you made out these shipping bills which have been introduced in evidence?

A. Some one in our employ makes them out.

Q. And you also, on the day the barley is shipped, mail a notice to your consignee, the form of which will be put in evidence, the same as Cargill & Company?

A. I did not see their form, but I presume they are precisely alike.

Q. The S. Y. Hyde Elevator Company owned this barley in question at the time it was burned?

A. Yes, sir.

Q. And while there was a sale of it to the consignee, as you say, yet the sale was not complete until the barley had reached St. Louis, and had been accepted?

A. That is it.

Q. And there having been no acceptance the property was still yours?

A. Yes, sir; and we shipped other barley to St. Louis in place of this which was burned.

Examination by Mr. WARREN:

Q. Testifying as to your understanding, and as to your not having knowledge of the restrictions and conditions contained in this

receipt, you do not mean to testify that Mr. Clark, or some other member or agent of your company did not know them?

A. I could not testify as to their knowledge of anything. I do not think they knew anything about it; they carry out the orders of the manager.

Q. If you have any printed tariffs or information as to the manner of shipping, and the rates, etc., will you kindly make it an exhibit to your evidence?

A. Would it make any difference if you said printed or written? Yes, we have had them and I presume I can find them now.

Q. If you can find one will you kindly make it part of your evidence?

A. Yes, sir.

Mr. HYDE: In compliance with Mr. Warren's request that I should furnish a tariff, I herewith hand the notary a tariff of the Chicago, Milwaukee & St. Paul Railway Company, in effect June 26th, 1893, and which was in force during the month of October, 1894.

This tariff the notary has marked Exhibit "D."

S. Y. HYDE.

288 *Testimony of J. C. Heitbahn.*

Mr. J. C. HEITBAHN, being first duly sworn testified as follows:

Examination by Mr. HANSON:

Q. Mr. Heitbahn, you are the agent of the Chicago, Milwaukee & St. Paul Railway Company at La Crosse?

A. I am.

Q. How long have you been agent here?

A. A little over a year and a half.

Q. You were agent here during the month of October, 1894?

A. Yes, sir.

Q. I will call your attention to a station receipt signed by you, dated October 16th, 1894, receipting for five cars of barley from S. Y. Hyde Elevator Company, which is marked "duplicate" in the files, and will ask you if that was made at the time of the shipment or after the property was destroyed?

A. That was made out afterwards.

Q. After the property was destroyed?

A. Yes, sir.

Q. Do you know whether one had been issued at the time the property was shipped?

A. No, sir; I do not.

Q. Why was this marked "duplicate" if you know?

A. For the reason that one might have been given for one of these cars and I did not want to issue another original on any of the cars. Of course these bills are negotiable, and I did not want to put out two receipts for the same car.

Q. Do you know that this duplicate was issued by you at the re-

quest of some one connected with the S. Y. Hyde Elevator Company for the purpose of preferring a claim for this barley which was lost?

A. I remember Mr. Clark being in there and discussing the question of receipts. I don't just remember this receipt, but I remember the circumstance.

Q. To your knowledge had Mr. Clark ever made out original receipts when barley had been delivered from the S. Y. Hyde Elevator Company?

A. No, sir.

Q. Where were they usually made out?

A. At the station by the company.

Q. When there were any made out?

A. Yes, sir.

289 Examination by Mr. WARREN:

Q. I do not understand you to testify that this particular receipt was made out by the company, do I?

A. No, sir.

Q. Have you any specific recollection of this certain receipt?

A. Yes, sir; I remember that the question came up at the time when he asked for the original bills, that is original receipts, and the question at that time arose whether any original receipts had been issued or not. They are very irregular in their asking for receipts. They probably do not take a receipt for one out of twenty-five or thirty or forty cars. It is very seldom that they ask for any receipts or bills of lading, and of these station receipts I keep no record, and there might have been a receipt issued for some of these cars.

Q. Did they make any objection to your putting the word "duplicate" on this receipt?

A. I know there was objection, because they did not know that the duplicate receipt would answer, but I declined to issue anything else.

By Mr. HANSON:

Q. Did he at that time state for what he wanted it?

A. Yes, sir; it was for the purpose of establishing a claim.

J. C. HEITBAHN.

EXHIBIT A.

Exhibit A to Testimony of J. C. Heilbahn—Blank Shipping Bill.

Chicago, Milwaukee & St. Paul railway.

Station agents will require parties loading cars, to furnish an account of the same on these blanks, and so far as practicable, require the same of all parties delivering freight for shipment. It must be done without fail in all cases when property is such as per their tariffs, the company transports at owner's risk.

These shipping bills must be carefully preserved for reference.

All car-load freight shall be subject to a minimum charge for tracknage and rental of $1.00 per car for each 24 hours' detention or fractional part thereof after the expiration of 48 hours from its arrival at destination, and after the expiration of 72 hours, this company shall be at liberty to unload and store the freight in a warehouse of its own or unload and deliver to a warehouseman, and the consignor or consignee shall pay the C., M. & St. P. R'y Company the expense of unloading and warehousing same, and for such expense this company shall have a lien upon the freight in addition to its own freight charges and back charges.

Form 69.

Shipping Bill.

Delivered to the Chicago, Milwaukee & St. Paul R'y Co., at —— station, ——, 189–, to be forwarded, subject to the terms and conditions of its published freight tariffs, the property described below, marked and consigned to ——.

No. of car.	Description of articles.	Weight.

—— ——, *Shipper.*

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EXHIBIT "B."

LA CROSSE, WIS., —— —, 189–.

DEAR SIR: We ship you today the following cars:

Car No.	Grain.	Grade.	Weight.	Remarks.

Yours truly,

W. W. CARGILL CO.

EXHIBIT "C."

LA CROSSE, WIS., —— —, 189–.

We ship you today the following:

Car No.	Grain.	Grade.	Weight.	Remarks.

S. Y. HYDE ELEVATOR CO.

1885

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CHICAGO, MILWAUKEE & ST. PAUL RAILWAY,

ROCK ISLAND & PEORIA RAILWAY

AND

JACKSONVILLE SOUTH-EASTERN LINE.

JOINT TARIFF.

Agents not provided with instructions regarding billing of Cleaned Barley, will apply to W. F. Dudley, Freight Auditor.

Issued June 21, 1893. Taking Effect June 26, 1893.

	FROM	Rates in Cents per 100 Pounds. TO EAST ST. LOUIS. FLAX SEED. C. L.	EAST ST. LOUIS. Wheat, Corn, Rye, Oats, Flour and Millstuffs, C. L.	ST. LOUIS. FLOUR. C. L.
	Minneapolis ..... Minn.	17	16	16
	Minnesota Transfer ..... "	17	16	16
	*Merriam Park ..... "	17	16	16
	Macalester ..... "	17	16	16
	St. Paul ..... "	17	16	16
	Newport ..... "	17	16	16
	Langlon ..... "	17	16	16
	Hastings ..... "	17	16	16
	*Point Douglas ..... "	17	16	16
	Afton ..... "	17	16	16
	Lakeland ..... "	17	16	16
	South Stillwater ..... "	17	16	16
	Stillwater ..... "	17	16	16
River Division.	Etter ..... "	17	16	16
	Eggleston ..... "	17	16	16
	Red Wing ..... "	17	16	16
	Frontenac ..... "	17	16	16
	Lake City ..... "	17	16	16
	*Kings Cooley ..... "	17	16	16
	Read's Landing ..... "	17	16	16
	Wabasha ..... "	17	16	16
	Kellogg ..... "	17	16	16
	Weaver ..... "	17	16	16
	Minneiska ..... "	17	16	16
	Minnesota City ..... "	16	16	16
	Winona ..... "	16	16	16
	*Homer ..... "	16	16	16
	La Moille ..... "	16	16	16
	Dakota ..... "	16	16	16
	Dresbach ..... "	16	16	16
	River Junction ..... "	16	16	16
	La Crosse ..... Wis.	16	16	16

* Prepaid Stations.

FROM		Rates in Cents per 100 Pounds. TO EAST ST. LOUIS. FLAX SEED, C. L.	EAST ST. LOUIS. Wheat, Corn, Rye, Oats, Flour and Millstuffs, C. L.	ST. LOUIS. FLOUR, C. L.
Dubuque Division.				
Brownsville	Minn.	16	16	16
Reno	"	16	16	16
New Albin	Iowa	16	16	16
*Kains	"	16	16	16
Lansing	"	16	16	16
*Heytman's	"	16	16	16
Harper's Ferry	"	16	16	16
Waukon Junction	"	16	16	16
McGregor	"	16	16	16
Prairie du Chien	Wis.	16	16	16
*Soy Magill	Iowa	16	16	16
Clayton	"	16	16	16
*Eckards	"	16	16	16
Guttenberg	"	16	16	16
*Turkey River Junction	"	16	16	16
Turkey River	"	16	16	16
Buena Vista	"	16	16	16
*Waupeton	"	16	16	16
*Cameron	"	16	16	16
Specht's Ferry	"	16	16	16
*Edmore	"	16	16	16
*Eagle Point	"	13½	12½	12½
Dubuque	"	13½	12½	12½
*Massey	"	13½	12½	12½
*Smiths	"	13½	12½	12½
Gordon's Ferry	"	13½	12½	12½
Bellevue	"	13½	12½	12½
*Pleasant Creek	"	13½	12½	12½
Green Island	"	13½	12½	12½
*Lainsville	"	13½	12½	12½
Cascade	"	18	15	16
*Fillmore	"	18	15	16
Bernard	"	18	15	16
*Washington Mills	"	18	15	16
Zwingle	"	17	15	16
La Motte	"	16	15	16
*Paradise	"	16	15	16

* Prepaid Stations.

1887

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Exhibit D.

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RECEIPT NO. 1038.

Supplement No. 5 to Joint Tariff { C., M. & St. P. G. F. D. No. 7879. R. I. & P. Joint Tariff No. C-172. J. S.-E. Line No. 1804.

Cancels all previous Supplements and Amendments.

Chicago, Milwaukee & St. Paul Railway,

Rock Island & Peoria Railway,

Chicago, Peoria & St. Louis Railway

C. H. BOSWORTH, Receiver.

Supplement to above named tariff issued June 21, 1893, covering rates on Flax Seed, Flour and Grain, in carloads, from stations in Iowa, Minnesota and South Dakota, to East St. Louis, Ill., and St. Louis, Mo.

Wheat, Flour and Millstuffs, in carloads.

Issued February 24, 1896. **Effective March 6, 1896.**

To East St. Louis, Ill. from		Rate in Cents per 100 lbs.
River Division.	Minneapolis	Minn.	18½
	Minnesota Transfer	"	
	*Merriam Park	"	
	Macalester	"	
	St. Paul	"	
	Newport	"	
	Langdon	"	
	Hastings	"	
	*Point Douglas	"	
	Afton	"	
	Lakeland	"	
	South Stillwater	"	
	Stillwater	"	
	Etter	"	
	Eggleston	"	
	Red Wing	"	
	Frontenac	"	
	Lake City	"	
	Kings Cooley	"	
	Read's Landing	"	
	Wabasha	"	
	Kellogg	"	
	Weaver	"	
	Minneiska	"	
	Minnesota City	"	
	Winona	"	
	Homer	"	
	LaMoille	"	

Cancelled

To East St. Louis, Ill., from		Rate in Cents per 100 lbs.
River Div.	Dakota	Minn.	18½
	Dresbach	"	
	River Jct.	"	
La Crosse Div.	La Crosse	Wis.	
La Crosse Div.	Houston	Minn.	
Dubuque Division.	Brownsville	"	
	Reno	"	
	New Albin	Iowa	
	*Kains	"	
	Lansing	"	
	*Heytman's	"	
	Harper's Ferry	"	
	Waukon Jct	"	
	McGregor	"	
Prairie du Chien Div.	Prairie du Chien	Wis.	
Dubuque Division.	*Soy Magill	Iowa	
	Clayton	"	
	*Eckards	"	
	Guttenberg	"	
	*Turkey River Jct.	"	
	Turkey River	"	
	Buena Vista	"	
	*Waupeton	"	
	*Cameron	"	
	Specht's Ferry	"	
	*Edmore	"	

Cancellation Notice.

The rate on Flour in carloads, from stations on River, La Crosse, Prairie du Chien and Dubuque Divisions named above to St. Louis, Mo., is withdrawn and canceled.

*Prepaid station.

Originally in Ans. 1—Effective May 15 91.

BARLEY, in carloads.

	From	To East St. Louis, Ill.	To St. Louis, Mo.
		Rates in cents per 100 lbs.	
Iowa Division	Waterville ..... Iowa	16	16
	Waukon ..... "	16	16
Iowa & Dakota Division	*Ventura ..... "	19	..
	Britt ..... "	20	..
	Hutchins ..... "	20	..
	Wesley ..... "	20	..
	Sexton ..... "	20	..
Dubuque Division	*Freeburg ..... "	17	17
	Calvonia ..... "	17	17
	Spring Grove ..... "	17	17
	Newhouse ..... "	17	17
	Mabel ..... "	17	17
	*Donald's Switch ..... "	17	17
	Prosper ..... "	17	17
	Canton ..... "	17	17
	Harmony ..... "	17	17
	*Hutton ..... "	17	17
	Preston ..... "	17	17

Barley from stations named below may be cleaned in transit for East St. Louis, Ill., or †St. Louis, Mo., as follows:

From	To be cleaned at	At what rates.	How to way-bill.
Stations on Dubuque Division named above	Lansing ..... Iowa McGregor ..... " Dubuque ..... " Savanna ..... Ill.	Current rate from shipping station to destination	Way-bill to cleaning station at through rate.
	Prairie du Chien, Wis.	$2.00 per car Bridge Toll above current rate, from shipping station to destination	Way-bill to Prairie du Chien, Wis., at through rate, plus $2.00 Bridge Toll.
Stations on Southern Minnesota Division, Easton to Pipestone, Minn., and Mankato Branch	Grand Meadow .. Minn.	Current rate from shipping station to destination	Way-bill to the cleaning station at through rate.
	NOTE.—Billing Agents must note on way-bill "Weigh at Wells, Minn." Freight charges must be computed on basis of Wells weights.		
Stations in Wisconsin, Iowa, Minnesota and South Dakota, named on pages 4, 5, 6 and 8 of above tariff, except stations on C. & C. B. Division south of Delmar Jct. and Oxford Jct., Iowa	Savanna ..... Ill.	Direct rate from shipping station to destination, except on shipments from stations on page 8, where rates given on that page will apply	Way-bill to the cleaning station at the through rate.

*Prepaid station.

†Applies only in cases where rates are provided for in tariff to St. Louis, Mo.

Correct Billing Instructions on pages 3 and 6 of Joint Tariff C., M. & St. P. G. F. D. No. 7579 R. I. & P. Joint No. C-172, J. S.-E. Line No. 1804, as follows:

Direct shipments for East St. Louis, Ill., or St. Louis, Mo., must be way-billed through to East St. Louis, Ill., via Rock Island, Ill., at through rates in effect to East St. Louis or St. Louis. Shipments from points Oxford Jct. to Paralta, inclusive; Wyoming to Jackson Jct., inclusive; Springville to Farley, inclusive; and stations south of and including Oxford Mills and Maquoketa, Iowa, must be routed via Davenport, Iowa, and will be delivered to the R. I. & P. R'y at Rock Island, Ill.

Attach to and make part of Joint Tariff { C., M. & St. P. G. F. D. No. 7579. / R. I. & P. Joint No. C-172. / J. S.-E. L. No. 1804.

J. H. Hiland,
General Freight Agent,
C., M. & St. P. R'y, Chicago, Ill.

R. Stockhouse,
General Freight Agent,
R. I. & P. R'y, Rock Island, Ill.

W. M. Bushnell,
General Freight Agent,
C., P. & St. L. R'y, St. Louis, Mo.

1890

296 *Exhibit D.* 274

RECEIPT NO. 7047.

Supplement No. 6 to Joint Tariff { C., M. & St. P. G. F. D. No. 7579. / R. I. & P. Joint Tariff No. C-172. / J. S.-E. Line No. 1804.

Chicago, Milwaukee & St. Paul Railway.

Rock Island & Peoria Railway,

Chicago, Peoria & St. Louis R'y { C. H. BOSWORTH, Receiver.

Supplement to above named tariff, issued June 21, 1893, covering rates on Flax Seed, Flour and Grain, in carloads, from stations in Iowa, Minnesota and South Dakota, to East St. Louis, Ill., and St. Louis, Mo.

Issued September 14, 1896. **Effective September 19, 1896.**

Barley from stations named below may be cleaned in transit for East St. Louis, Ill., or †St. Louis, Mo., as follows:

From	To be Cleaned at	At what rates.	How to way-bill.
Stations on Southern Minnesota Division, Ramsey to and including Pipestone, Minn.; Iowa & Minnesota Division, Conover, Iowa, to and including Blooming Prairie, Minn.; Varco, Minn. to and including Plymouth Jct., Iowa, also Decorah, Iowa; Iowa & Dakota Division, Calmar, Iowa, to and including Mitchell and Running Water, S. Dak., also Spirit Lake Branch; Chicago & Council Bluffs Division, Oakton to and including Oxford Mills, Iowa.	Davenport, Iowa.	One cent per 100 lbs. higher than direct rate from shipping station to destination.	Way-bill to Davenport, Iowa, at the through rate plus one cent per 100 lbs.

Canceled

†Applies only in cases where rates are provided for in tariff to St. Louis, Mo.

Agent at Davenport, Iowa, must apply to the Freight Auditor for instructions regarding the way-billing of the cleaned Barley.

Attach to and make part of above named tariff.

J. H. Hilard,
General Freight Agent,
C., M. & St. P. R'y, Chicago.

R. Stockhouse,
General Freight Agent,
R. I. & P. R'y, Rock Island, Ill.

W. H. Bushnell,
General Freight Agent,
C., P. & St. L. R'y, St. Louis, Mo.

1000

1891

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Routing and Billing Instructions on Shipments from Points on Pages 1 and 2.

Direct Shipments for East St. Louis, Ill., will be way-billed through via Rock Island, Ill. Direct Shipments for St. Louis, Mo., will be way-billed through to East St. Louis, Ill., via Rock Island, Ill., at 1½c per 100 lbs. less than through rates.

Wheat, in car loads, from St. Paul, Minneapolis, or Minnesota Transfer, Minn., to East St. Louis, Ill., or St. Louis, Mo., may be milled in transit at Winona, Minn., at rate of 18½c per 100 lbs. Way-bill to Winona, Minn., at the through rate.

Wheat, in car loads, from St. Paul, Minneapolis, or Minnesota Transfer, Minn., to East St. Louis, Ill., or St. Louis, Mo., may be milled in transit at La Crosse, Wis., at rate of 18½c per 100 lbs., plus $2.00 for La Crosse Bridge Tolls. Way-bill to La Crosse, Wis., at the through rate, plus $2.00 Bridge Toll.

OATS, IN CAR LOADS.

	TO ST. LOUIS, MO. FROM	In Cents per 100 lbs.
Iowa & Minnesota Div.	Conover.....Iowa	15
	Decorah..... "	15
	Ridgeway..... "	15
	Cresco..... "	16
	*Bonair..... "	16
	Lime Springs..... "	16
	Chester..... "	16
	Leroy.....Minn.	16
	Taopi..... "	16
	Adams..... "	16
Iowa & Dakota Div.	Postville.....Iowa	15
	Castalia..... "	15
	Ossian..... "	15
	Calmar..... "	15
	Ft. Atkinson..... "	15
	Lawler..... "	15
	New Hampton..... "	15
	Ionia..... "	15½

	TO ST. LOUIS, MO. FROM	In Cents per 100 lbs.
Chicago & Council Bluffs Div.	Oxford Junc.....Iowa	15
	Hale..... "	15
	Olin..... "	15
	Morley..... "	15
	Martelle..... "	15
	Paralta..... "	15
	Wyoming..... "	15
	Centre Junc..... "	15
	Scotch Grove..... "	15
	Monticello..... "	15
	Hopkinton..... "	15
	Delhi..... "	15
	Delaware..... "	15
	Greeley..... "	15
	Edgewood..... "	15
	Strawberry Point..... "	15

	TO ST. LOUIS, MO. FROM	In Cents per 100 lbs.
Chicago & Council Bluffs Div.	Brush Creek.....Iowa	15
	Fayette..... "	15
	Hawkeye..... "	15
	Waucoma..... "	15
	Jackson Junc..... "	15
	Springville..... "	15
	Viola..... "	15
	Stone City..... "	15
	Anamosa..... "	15
	Langworthy..... "	15
	Sand Spring..... "	15
	Worthington..... "	15
	Farley..... "	15

* Prepaid Stations.

Way-bill through to East St. Louis, Ill., via Rock Island, Ill., at 1½c per 100 lbs. less than through rates. (Shipments from points Oxford Junc. to Paralta, inclusive, Wyoming to Jackson Junc. inclusive, and Springville to Farley, inclusive, will be routed via Davenport, Iowa, and delivered to the R. I. & P. R'y at Rock Island, Ill.)

1892

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BARLEY, IN CAR LOADS.

Rates in Cents per 100 Pounds.

	FROM		TO East St. Louis	TO St. Louis
River Division.	Minneapolis	Minn.	17	17
	Minnesota Transfer	"	17	17
	*Merriam Park	"	17	17
	Macalester	"	17	17
	St. Paul	"	17	17
	Newport	"	17	17
	Langdon	"	17	17
	Hastings	"	17	17
	*Point Douglas	"	17	17
	Afton	"	17	17
	Lakeland	"	17	17
	South Stillwater	"	17	17
	Stillwater	"	17	17
	Etter	"	17	17
	Eggleston	"	17	17
	Red Wing	"	17	17
	Frontenac	"	17	17
	Lake City	"	17	17
	*Kings Cooley	"	17	17
	Read's Landing	"	17	17
	Wabasha	"	17	17
	Kellogg	"	17	17
	Weaver	"	17	17
	Minneiska	"	17	17
	Minnesota City	"	17	17
	Winona	"	17	17
	*Homer	"	17	17
	La Moille	"	17	17
	Dakota	"	17	17
	Dresbach	"	17	17
	River June	"	17	17
	La Crosse	Wis.	16	16
Southern Minnesota Division.	La Crescent	Minn.	16	16
	Hokah	"	17	17
	*Mound Prairie	"	17	17
	Houston	"	17	17
	*Money Creek	"	17	17
	Rushford	"	17	17
	Peterson	"	17	17
	Whalan	"	17	17
	Lanesboro	"	17	17
	Isinours	"	17	17
	Fountain	"	17	17
	Wykoff	"	17	17
	Spring Valley	"	17	17
	Grand Meadow	"	17	17
	Dexter	"	17	17
	Brownsdale	"	17	17
Southern Minnesota Division.	Ramsey	Minn.	17	17
	Oakland	"	17	17
	Hayward	"	17	17
	Albert Lea	"	17	17
	Armstrong	"	17	17
	Alden	"	18	18
	*Evans	"	18	18
	Wells	"	18	18
	Minnesota Lake	"	18	18
	Mapleton	"	18	18
	Good Thunder	"	18	18
	Rapidan	"	18	18
	Mankato	"	18	18
	Easton	"	19	19
	Delavan	"	20	20
	Winnebago City	"	21	21
	Huntley	"	21	21
	Fairmont	"	22	22
	Welcome	"	22	22
	Sherburn	"	22	22
	Jackson	"	22	22
	Lakefield	"	22	22
	*Okabena	"	22	22
	Prairie Junction	"	22	22
	Kinbrae	"	23	23
	Fulda	"	23	23
	Iona Lake	"	23	23
	Chandler	"	23	23
	Edgerton	"	23	23
	Hatfield	"	23	23
	Pipestone	"	23	23
Dubuque Division.	Brownsville	"	16	16
	Reno	"	16	16
	New Albin	Iowa	16	16
	*Kains	"	16	16
	Lansing	"	16	16
	*Heytman's	"	16	16
	Harper's Ferry	"	16	16
	Waukon June	"	16	16
	McGregor	"	15	15
	Prairie du Chien	Wis.	16	16
	*Soy Magill	Iowa	15	15
	Clayton	"	15	15
	*Eckards	"	15	15
	Guttenberg	"	15	15
	*Turkey River June	"	15	15
	*Millville	"	15	
	*Schrunks	"	15	

* Prepaid Stations.

BARLEY, IN CAR LOADS.

Rates in Cents per 100 Pounds.

	FROM	TO East St. Louis	TO St. Louis
Dubuque Division.	Osterdock ..... Iowa	15	..
	Elkport ..... "	15	..
	Littleport ..... "	15	..
	Medersville ..... "	15	..
	*Osborne ..... "	15	..
	Volga City ..... "	15	..
	Wadena ..... "	15	..
	*Lima ..... "	15	..
	West Union ..... "	15	..
	Turkey River ..... "	15	15
	Buena Vista ..... "	15	15
	*Waupeton ..... "	15	15
	*Cameron ..... "	15	15
	Specht's Ferry ..... "	15	15
	*Edmore ..... "	15	15
	*Eagle Point ..... "	12½	12½
	Dubuque ..... "	12½	12½
	*Massey ..... "	12½	12½
	Gordon's Ferry ..... "	12½	12½
	Bellevue ..... "	12½	12½
	*Pleasant Creek ..... "	12½	12½
	Green Island ..... "	12½	12½
	*Lainsville ..... "	12½	12½
Iowa and Minnesota Division.	Cascade ..... "	15	16
	*Filimore ..... "	15	16
	Bernard ..... "	15	16
	*Washington Mills ..... "	15	16
	Zwingle ..... "	15	16
	La Motte ..... "	15	16
	*Paradise ..... "	15	16
	Conover ..... "	15	15
	Decorah ..... "	15	15
	Ridgeway ..... "	15	15
	Cresco ..... "	16	16
	*Bonair ..... "	16	16
	Lime Springs ..... "	16	16
	Chester ..... "	17	17
	Leroy ..... Minn.	17	17
	Taopi ..... "	17	17
	Adams ..... "	17	17
	Rose Creek ..... "	17	17
	Austin ..... "	17	17
	*Varco ..... "	17	17
	Lyle ..... "	17	17
	Otranto ..... Iowa	17	17
	Carpenter ..... "	17	17
	Grafton ..... "	17	17
	Plymouth ..... "	17	17

	FROM	TO East St. Louis	TO St. Louis
Iowa and Minnesota Div.	*Plymouth June. ..... Minn.	17	17
	Lansing ..... "	17	17
	Blooming Prairie ..... "	17	17
	Bixby ..... "	17	..
	Pratt ..... "	17	..
	Owatonna ..... "	17	..
	Medford ..... "	17	..
	*Wabott ..... "	17	..
Iowa and Dakota Division.	*Welsh ..... Minn.	17	17
	Cannon Falls ..... "	17	17
	*Randolph ..... "	17	17
	*Wallace ..... "	17	17
	*Waterford ..... "	17	17
	Northfield ..... "	17	17
	Dundas ..... "	17	17
	Faribault ..... "	17	17
	*Guard ..... Iowa	15	..
	Beulah ..... "	15	..
	Froelich ..... "	15	..
	*Bismarck ..... "	15	..
	Farmersburg ..... "	15	..
	St. Olaf ..... "	15	..
	Elkader ..... "	15	..
	Monona ..... "	15	..
	Luana ..... "	15	..
	*Ridley ..... "	15	..
	Postville ..... "	15	..
	Castalia ..... "	15	..
	Ossian ..... "	15	..
	Celmar ..... "	15	..
	Ft. Atkinson ..... "	15	..
	Lawler ..... "	15	..
	New Hampton ..... "	15	..
	Ionia ..... "	15½	..
	Bassett ..... "	16	..
	*Doubleday ..... "	16	..
	Charles City ..... "	16	..
	Floyd Crossing ..... "	16	..
	Rudd ..... "	17	..
	Nora Springs ..... "	17	..
	Nora June ..... "	17	..
	Portland ..... "	17	..
	Mason City June ..... "	17	..
	Mason City ..... "	17	..
	Clear Lake ..... "	18	..
	*Ventura ..... "	18	..
	Garner ..... "	19	..
	*Duncan ..... "	19	..

Rates as Eng. Dep.

* Prepaid Stations.

BARLEY, IN CAR LOADS.

Rates in Cents per 100 Pounds.

FROM		TO East St. Louis	TO St. Louis
Iowa & Dakota Division.			
Britt	Iowa	19	..
*Hutchins	"	19	..
Wesley	"	19	..
Sexton	"	19	..
Algona	"	20	..
Hobart	"	20	..
Whittemore	"	20	..
Cylinder	"	20	..
Emmetsburg	"	20	..
*Crippen	"	20	..
Ruthven	"	20	..
Dickens	"	20	..
Spencer	"	20	..
Milford	"	20	..
*Arnold's Park	"	20	..
*Lakes Okoboji	"	20	..
Spirit Lake	"	20	..
Everly	"	21	..
Hartley	"	21	..
*Waneta	"	21	..
Sanborn	"	22	..
Sheldon	"	22	..
Boyden	"	22	..
Hull	"	22	..
Rock Valley	"	22	..
Inwood	"	22	..
Canton	S. Dak.	22	..
Worthing	"	23	..
Lennox	"	24	..
Parker	"	25	..
Marion June	"	25	..

FROM		TO East St. Louis	TO St. Louis
Iowa & Dakota Division.			
Freeman	S. Dak.	26	..
Menno	"	27	..
*Tuscan	"	27	..
Scotland	"	27	..
Tyndall	"	28	..
Springfield	"	29	..
Running Water	"	30	..
*Dolton	"	25	..
Bridgewater	"	25	..
Emery	"	25	..
Alexandria	"	26	..
*Burton	"	27	..
Mitchell	"	27	..
Chicago & Council Bluffs Division.			
Oakton	Iowa	13	..
*Mt. Joy	"	13	..
Eldridge June	"	13	..
Donahue	"	13	..
Dixon	"	13	..
Big Rock	"	13	..
Wheatland	"	13	..
Toronto	"	13	..
Massillon	"	13	..
Oxford Mills	"	13	..
Long Grove	"	13	..
*Noel Station	"	13	..
De Witt	"	13	..
Welton	"	13	..
Delmar June	"	13	..
Maquoketa	"	13	

* Prepaid Stations.

Routing and Billing Instructions on Shipments from Points on Pages 4, 5 and 6.

Direct shipments for East St. Louis, Ill., will be way-billed through via Rock Island, Ill.

Direct shipments for St. Louis, Mo., will be way-billed through to East St. Louis, Ill., via Rock Island, Ill., at 1½ cents per 100 lbs. less than through rates. (Shipments from stations south of and including Oxford Mills and Maquoketa, will be routed via Davenport, Ia., and delivered to the R. I. & P. R'y at Rock Island, Ill.)

1895

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Barley from stations named on pages 4, 5 and 6, may be cleaned in transit for East St. Louis, Ill. or St. Louis, Mo. (where rates are provided for in tariff to St. Louis), as follows:

From Stations on	To be Cleaned at	At what Rate	How Way-Billed
River Division, North of cleaning point...	Red Wing ....Minn. Wabasha ..... " Winona ..... " Lansing .....Iowa	Current rate, from shipping point to destination	Way-Bill to cleaning point at through rate.
Iowa & Minnesota Division, Welsh to Faribault, Minn., inclusive (via Red Wing)	McGregor ..... " Dubuque ..... " Savanna .....Ill.		
	La Crosse.....Wis. Prairie du Chien.. "	$2.00 per car Bridge Toll above current rate, from shipping point to destination.....	Way-Bill to La Crosse, or Prairie du Chien, Wis., at through rate, plus $2.00 per car Bridge Toll.
Southern Minnesota Division.....	McGregor .....Iowa	Current rate, from shipping point to destination	Way-Bill to McGregor, Iowa, at through rate.
	La Crosse or Prairie du Chien, Wis.....	$2.00 per car Bridge Toll above current rate, from shipping point to destination	Way-Bill to La Crosse or Prairie du Chien, Wis., at through rate, plus $2.00 per car Bridge Toll.
Dubuque Division North of cleaning point	Lansing .....Iowa McGregor ..... " Dubuque ..... " Savanna .....Ill.	Current rate, from shipping point to destination	Way-Bill to cleaning point at through rate.
Iowa & Minnesota Division, Conover, Iowa, to Walcott, Minn., inclusive, when destined East St. Louis, Ill.....	McGregor .....Iowa	Current rate, from shipping point to destination	Way-Bill to McGregor, Iowa, at through rate.
	Prairie du Chien. Wis.	$2.00 per car Bridge Toll above current rate, from shipping point to destination.....	Way-Bill to Prairie du Chien, Wis., at through rate, plus $2.00 Bridge Toll.
Iowa & Minnesota Division, Conover, Iowa, to Blooming Prairie, Minn., inclusive, when destined St. Louis, Mo.	McGregor .....Iowa Dubuque ..... " Savanna .....Ill.	Current rate, from shipping point to destination	Way-Bill to cleaning point at through rate.
	Prairie du Chien. Wis.	$2.00 per car Bridge Toll above current rate, from shipping point to destination	Way-Bill to Prairie du Chien, Wis., at through rate, plus $2.00 Bridge Toll.
Iowa & Dakota Division.....	McGregor ..... Iowa	Current rate, from shipping point to destination	Way-Bill to McGregor, Iowa, at through rate.
	Prairie du Chien. Wis.	$2.00 per car Bridge Toll above current rate, from shipping point to destination.....	Way-Bill to Prairie du Chien, Wis., at through rate, plus $2.00 Bridge Toll.



1896

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Exhibit D.

C. M. & St. P. G. F. D. No. 7579—1893.
R. I. & P. Joint Tariff No. C. 172.
J. S.-E. Line No. 1904.

Canceling

C. M. & St. P. G. F. D. No. 5830—1891
R. I. & P. Joint Tariff No. C. 117.
J. S.-E. Line No.
Wabash No. 5205.

BARLEY, IN CAR LOADS,

FROM

STATIONS NAMED BELOW

TO

ST. LOUIS, MISSOURI,

May be Cleaned in Transit at McGREGOR, IOWA, at the following rates:

(See also Foot Note.)

	FROM	In Cents per 100 lbs.
Iowa & Dakota Division.	*Giard ..... Iowa	15
	Beulah ..... "	15
	Froelich ..... "	15
	*Bismarck ..... "	15
	Farmersburg ..... "	15
	St. Olaf ..... "	15
	Elkader ..... "	15
	Monona ..... "	15
	Luana ..... "	15
	*Ridley ..... "	15
	Postville ..... "	15
	Castalia ..... "	15
	Ossian ..... "	15
	Calmar ..... "	15
	Ft. Atkinson ..... "	15
Iowa & Dakota Division.	Lawler ..... Iowa	15
	New Hampton ..... "	15
	Ionia ..... "	15½
	Bassett ..... "	16
	*Doubleday ..... "	16
	Charles City ..... "	16
	Floyd Crossing ..... "	16
	Rudd ..... "	17
	Nora Springs ..... "	17
	Nora June ..... "	17
	Portland ..... "	17
	Mason City June ..... "	17
	Mason City ..... "	17
	Clear Lake ..... "	19
Iowa & Dakota Division.	*Ventura ..... Iowa	20
	Garner ..... "	21
	*Duncan ..... "	21
	Britt ..... "	21
	*Hutchins ..... "	21
	Wesley ..... "	21
	Sexton ..... "	21
	Algona ..... "	22
	*Hobart ..... "	22
	Whittemore ..... "	22
	Cylinder ..... "	22
	Emmetsburg ..... "	22
	*Crippen ..... "	22
	Ruthven ..... "	22

* Prepaid Stations.

Shipments of Barley from above stations for St. Louis may be cleaned in transit at Prairie du Chien, Wis., at $2.00 per car in addition to rates shown herein.

Shipments to be billed to the cleaning point at the through rate and the cleaned grain to be forwarded to St. Louis via Rock Island, Ill., R. I. & P. R'y, and J. S. E. Line.

NOTE.—In addition to rates provided for herein an additional charge of not less than $1.00 per day or fraction thereof will be charged on all car loads for detention at loading or unloading point beyond 48 hours.

Agents are prohibited from quoting or using a higher rate for a shorter than for a longer distance, over the same line in the same direction, the shorter being entirely included within the longer distance.

J. H. HILAND,
General Freight Agent,
C. M. & St. P. R'y, Chicago.

R. STOCKHOUSE,
General Freight Agent,
R. I. & P. R'y, Rock Island, Ill.

W. C. ALVORD,
General Freight Agent,
Jacksonville South Eastern Line, Jacksonville, Ill.

303 EXHIBIT "D."

Joint Tariff.

Joint tariff circular.

LA CROSSE, WIS., *Oct.* 11, 1895.

Mr. P. B. Warren to H. W. Thompson, Dr.

To notary's fees for taking depositions of E. J. Tull, S. Y. Hyde and J. C. Heitbahn, in case of Mercantile Trust Company, of New York, against Chicago, Peoria & St. Louis Railway Company.....	$9 36
Including stenographer's fees....	21 50
	$30 86

Received payment Oct. 19, 1895,

H. W. THOMPSON.

(Indorsed:) Filed October 14, 1895. James T. Jones, clerk.

Received at Chicago, Jan. 28th, 1896.

SPRINGFIELD, ILL.

To Burton Hanson, gen. sol. C., M. & St. P. R'y, Chicago:

February 4th will be convenient. See my letter written yesterday.

WILSON & WARREN.

SPRINGFIELD, ILL., *Jan.* 27, 1896.

Burton Hanson, Esq., general solicitor C., M. & St. P., Chicago, Illinois.

DEAR SIR: Replying to your favors of the 25th and 26th inst., in the matter of taking testimony at La Crosse, Wisconsin, I beg respectfully to say that the 4th of February will be convenient to us, and that I will meet you in La Crosse that morning at the same hotel where I met you before.

If for any reason you do not expect to be able to take the testimony of all the witnesses there, please advise me so that I can make arrangements to go with you to other points.

I enclose herewith the stipulation signed as requested by you.

Yours very truly, PHILIP BARTON WARREN.

304 E.

Stipulation as to Parties Taking Testimony.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD Company, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James F. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company, and Thomas McMichael and William McMichael, doing business under the firm name of McMichael & Son, and Henry Rippe, and Huntting Elevator Company.

It is stipulated by and between the parties to these proceedings that the testimony of the petitioners herein, W. W. Cargill Company, S. Y. Hyde Elevator Company, Jacob Rau, Gilchrist & Company, Huntting Elevator Company, T. McMichael & Son and Henry Rippe, in support of the allegations of facts stricken out of a certain stipulation entered into herein, dated August 27th, 1895, by an order of January 22nd, 1896, of this court, may be taken at the city of La Crosse, Wisconsin, before a notary public on the fourth day of February, A. D. 1896, at nine o'clock in the forenoon, and the taking thereof continued from day to day until the same shall be concluded, without formal notice thereof, and that the testimony taken under this stipulation may be received with the same force and effect as if taken before the master herein, and upon notice duly served.

BLUFORD WILSON,
P. W. WARREN,
Sol'c'rs for Receiver.

BURTON HANSON,
GEORGE P. CARY,
Sol'rs for Petitioners.

305 In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW York, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMpany, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; the Huntting Elevator Company, Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

It is stipulated by and between the parties to these proceedings that in pursuance of a stipulation heretofore entered into, which is attached to these depositions, the testimony of W. W. Cargill, in behalf of the W. W. Cargill Company; S. Y. Hyde, in behalf of the S. Y. Hyde Elevator Company; Jacob Rau, Mr. James N. Gilchrist, in behalf of Gilchrist & Company; J. H. Ellsworth, in behalf of the Huntting Elevator Company; William McMichael, in behalf of T. McMichael & Son, and Henry Rippe, may be taken herein before M. C. Lightbody, a notary public in and for the State of Wisconsin, residing at La Crosse, Wisconsin, at this time, to wit: the 4th day of February, A. D. 1896, at nine o'clock a. m., with the same force and effect as if the depositions of such persons had been taken on written notice duly given therefor; that the signatures of such persons whose depositions are so taken *is* hereby waived, and that such depositions when taken may be sent by mail to Mr. James T. Jones, clerk of the above-named court, at Springfield, Illinois, and that when so received and filed by him may be taken and read in evidence with the same force and effect as if taken before Mr. Stuart Brown, the master herein, upon notice duly given.

On the 4th day of February, A. D. 1896, before M. C. Lightbody, the notary public above named, at the office of Losey & Woodward, in the city of La Crosse, county of La Crosse, and State of Wisconsin, appeared Mr. Burton Hanson, as attorney for the above-named petitioners, and Mr. Philip Barton Warren the attorney for
306 the said railway company, and the receiver, Mr. C. H. Bosworth, and after making and consenting to the foregoing stipulation, the following proceedings were had:

Testimony of James N. Gilchrist.

Mr. JAMES N. GILCHRIST, being first duly sworn, testified as follows:

Direct examination by Mr. HANSON:

Q. Mr. Gilchrist, you reside at McGregor, Iowa?
A. Yes, sir.

Q. And you are a member of the firm of Gilchrist & Company?
A. Yes, sir.
Q. One of the petitioners in these proceedings?
A. Yes, sir.
Q. The firm of Gilchrist & Company is in business at McGregor?
A. Yes, sir.
Q. On the 10th day of October, 1894, did Gilchrist & Company ship a car-load of barley consigned to Teichman Commission Company, St. Louis, St. Paul car No. 38108?
A. Our agent at Ossian did.
Q. Did Gilchrist & Company also ship on the 11th day of October a car-load of barley in St. Paul car No. 1154, consigned to Teichman & Company, St. Louis?
A. Yes, sir, we shipped in the same way through our agent at Ossian.
Q. Both of these cars of barley were consigned to St. Louis to this commission firm?
A. They were.
Q. Under what arrangement, Mr. Gilchrist, was this barley in these two cars shipped?
A. It was shipped to fill a sale made to Teichman & Company.
Q. What were the terms of that sale?
A. The terms of the sale were that they were to pay us——

Mr. WARREN: I object if the terms were in writing.

Q. What were the terms of that sale?
A. The terms of the sale were that they were to pay us 55½ cents per bushel for five thousand bushels of barley delivered in St. Louis.
Q. Was the barley in these two cars, as above stated, shipped to fill that order?
307 A. They were.
Q. What was the arrangement with reference to the payment of freight from the point of shipment to St. Louis?
A. We were to deliver the barley in St. Louis.
Q. You to pay the freight?
A. We were to pay the freight.
Q. Do you know whether this barley ever reached St. Louis?
A. Well, we had reports that the cars were burned at East St. Louis.

Mr. WARREN: I object to this testimony in reference to reports.

Q. When you received word or information that the barley contained in these two cars had been destroyed by fire at East St. Louis, what further was done by you toward filling this contract, which you had with Teichman & Company to deliver 5,000 bushels of barley at St. Louis?
A. Well, that identical sale was filled out of barley shipped to fill another sale made within a day or two, and afterwards, we shipped two cars besides in order to make up the deficiency in the second sale.

Q. Why were these two additional cars shipped, for what purpose?

A. We shipped them to deliver the barley, to make up the amount sold.

Q. To make up the amount of 85,000 bushels which you state you first sold?

A. Yes, sir; well—strictly it was to make up the barley that was taken out of the second sale.

Q. What was the barley taken out of the second sale for?

A. The barley that was shipped to fill the second sale, two cars of it was taken out to fill the first sale which we made.

Q. Why was that done?

A. It was done to deliver to them the necessary amount to fill the sale.

Q. Why was the amount necessary?

A. Because it was a part of the sale; we were to deliver them so much barley.

Q. That was the arrangement that you were to deliver to them five thousand bushels of barley?

A. Yes, sir.

Q. At St. Louis——

A. Yes, sir.

Q. And because these two cars were destroyed at East St. Louis, and never reached Teichman & Company, two other cars were shipped to St. Louis to complete your contract with reference to the 5,000 bushels?

308 A. Yes, sir; that is it.

Q. Is Gilchrist & Company still the owner of the claim arising out of the destruction of these two cars of barley at East St. Louis?

(Objected to.)

A. Yes, sir.

Q. Has any other firm or person or corporation any interest whatever in this barley which was destroyed at East St. Louis in these two *acres?*

A. No, sir.

Q. Has any other firm, person or corporation any interest in the claim which is presented on account of the destruction of this barley?

A. None whatever.

Q. Gilchrist & Company own the claim?

A. They own the claim.

Cross-examination by Mr. WARREN:

Q. You may state, Mr. Gilchrist, in what way this contract for the sale of 5,000 bushels of barley was made, whether verbally or in writing.

A. It was made by wire and letter.

Q. Have you the correspondence both by wire and mail in your possession?

A. I think I have that letter confirming the sale.
Q. Haven't you the original correspondence?
A. Yes, I have that letter.

(Letter produced and shown to counsel.)

Q. Then the first offer for the sale of this barley came from you?
A. Yes, sir—well, I don't know how the first negotiations commenced. We sometimes make them an offer and they accept.
Q. How did you make them that offer?
A. My impression is that we made it by wire.
Q. Have you got a copy of your message?
A. I haven't it with me.
Q. Can you produce a copy?
A. I think I can get one from the telegraph office.

Mr. WARREN: I will ask the witness to produce all the correspondence which took place between himself and the Teichman Commission Company relating to the negotiation and consummation of the sale of this barley.

309 Q. You say that the Teichman Commission Company took out of a subsequent shipment of barley which you made to them two cars to fill some deficiency in the first shipment?
A. Yes, sir.
Q. Upon whose authority did they take that out?
A. Well, I don't remember whether there was any authority granted to them or not. They accounted to us for the sale at 55½ cents; that included two sales one at 55½ cents and one at 56 as stated in the letter there. We ordered the first sale filled first, and it was out of the barley shipped to fill the first sale that these two cars were burned. We ordered the second sale filled by shipment from this same station Ossian, and they went along and accounted to us for the first sale at 55½ cents, taking two cars from the shipment made to fill the second sale.
—. They simply did that of their own volition; you did not instruct them to do it?
A. Not that I know of.
Q. Do you know, of your own personal knowledge, that this shipment was ever delivered to Teichman Commission Company.
A. I only know that they have not accounted to us for it.
Q. But do you know, of your own knowledge, whether it was delivered at St. Louis or not?
A. No.
Q. Did you notify the railroad company that you were the owner of this barley until it reached St. Louis?
A. No; I don't think we gave them any notice. We shipped the barley the same as we always do.
Q. It was consigned to Teichman Commission Company, not to your order?
A. It was not consigned to our order; it was consigned to Teichman and Company.
Q. Do you know, of your own knowledge, whether Teichman

Commission Company ever made any change in the destination of the barley?

A. I do not.

Q. This was a contract sale; they were not selling for you on commission, were they?

A. No, sir.

Redirect examination by Mr. HANSON:

Q. It was a sale, as you stated, to be delivered at St. Louis, freight paid?

A. It was.

Mr. WARREN: I want it to appear in the record that I object to all the testimony of this witness.

310 Q. This letter which you have produced from the Teichman Commission Company to you under date of October 8, 1894, is in answer to telegrams from you on the 6th and 8th of October, is it not?

A. My impression is it is telegrams; I am not quite certain.

Q. The letter says telegrams.

A. I am not quite certain.

Q. Have you a copy of those telegrams?

A. I have not, but I think I can get one at the telegraph office; there is very little doubt but what I can; I don't know that I can get the originals.

Q. You did not keep any copies of them yourself?

A. I generally do, or often do, but I could not find any copies of these. Sometimes we do and sometimes we do not.

The witness here states that he will use his best endeavors to get the originals of these telegrams, and, if he cannot get them, he will get copies, if they can be found, and, when he gets them, he will send them to the notary to be attached to his testimony.

He also states that he will produce any other correspondence which relates to the sale of this barley, and that such correspondence, when so produced, will be all which relates to such sale.

Question by Mr. HANSON:

Q. Mr. Gilchrist, you have been shipping from McGregor for a number of years, haven't you?

A. Yes, sir.

Q. Barley and other grain?

A. Yes, sir.

Q. Do you ever, when you deliver barley and other grains to the railroad company, notify the company in regard to the terms or arrangements of the sale of the property?

A. We do not.

Q. You never say anything about it, nor they to you?

A. No, sir.

Q. It is not customary at all, is it?

A. No, sir.

Q. And it is not the custom between your company and the railroad company doing your shipping?

A. No, sir; our agents do most of the shipping.

—. Mr. Gilchrist, I want to ask you what was the understanding between the Gilchrist Company and the Teichman Commission Company in reference to the ownership of this barley?

A. Well, we agreed to deliver the barley to them at St. Louis, a certain amount at a certain price.

Q. Was that understanding acted upon in making the shipments in question?

311 A. It was.

By Mr. WARREN: I object to that if that understanding is based upon any correspondence.

Mr. HANSON: Upon what was that understanding based?

A. Why, we have barley to sell; we invite bids one way; another way we make offers—both ways; sometimes they are accepted and trades result; very often no trade results. If we offer and the terms are satisfactory, they accept, then we proceed to ship the barley or any other grain which we have sold. If no trade results, then that is the end of it. If they offer us a certain price and we accept, we ship the barley to fill the terms of the sale.

Q. Now, what were the terms of the sale in reference to the place of the delivery of the barley?

A. I think our sales in St. Louis have been almost always delivered there; in fact I know they have. We never sold any barley in St. Louis to be delivered anywhere else.

Q. Was that understanding acted upon in the shipment of the barley in question?

A. It was.

Q. Acted upon both by Gilchrist & Company and the Teichman Commission Company?

A. We shipped it to them to be delivered at St. Louis, and that ended it as far as we were concerned.

By Mr. WARREN: I will ask you Mr. Gilchrist if you will state how the understanding which you have testified to was arrived at, whether verbally or by correspondence?

A. By telegrams and correspondence together I think.

Q. And you have stated that you would produce that correspondence?

A. I will do the best I can to do so.

(The following correspondence is attached to and made a part of this deposition of Mr. James N. Gilchrist pursuant to the statement of the witness, above made, that he would produce all the correspondence which took place between himself and the Teichman Commission Company in relation to the negotiation for and consummation of the sale of the barley referred to in said deposition.)

Received at McGregor, 10/6, 1894.
St. Louis, Mo.

Gilchrist & Co.:
Offer fifty-five one-half net sample five cars answer/
TEICHMAN COM. CO.

312 Dated McGregor, Iowa, Oct. 6, 1894.

Teichman Com. Co., St. Louis, Mo.:
We accept offer five cars sample/
GILCHRIST & CO.

Received at McGregor, Iowa.
Dated St. Louis, Mo., 10/8, 1894.

Gilchrist & Co.:
Route shipments via East St. Louis think could place five thousand more.
TEICHMAN COM. CO.

Dated McGregor, Oct. 8, 1894.

Teichman Com. Co., St. Louis:
Shipping directions received will sell five more fifty-six net.
GILCHRIST & COMPANY.

Received at McGregor 10/8, 1894.
Dated St. Louis, Mo.

Gilchrist & Co.:
Please wire quantity acceptance our bid state number of bushels.
TEICHMAN COM. CO.

Dated McGregor, Iowa, 10/8, 1894.

Teichman Commission Co., St. Louis, Mo.:
Make quantity five thousand bushels send billing directions.
GILCHRIST & CO.

Received at McGregor 10/8, 1894.
Dated St. Louis, Mo.

Gilchrist & Co.:
Accept five thousand more fifty-six net same shipping directions.
TEICHMAN COM. CO.

ST. LOUIS, Mo., *Oct. 8th*, 1894.

Messrs. Gilchrist & Company, McGregor, Iowa.

313 GENTLEMEN: We have your telegram of the 6th and 8th, and now confirm sale, 5,000 bushels your sample barley at 55½c. net, and 5,000 bushels your sample barley at 56c. net here, to be shipped via East St. Louis.

We expect to secure a good custom for this grade of barley, and hope to sell all you will have. Keep us advised of any more offerings, and oblige,

Yours truly, TEICHMAN COMMISSION CO.

ST. LOUIS, MO., *Nov.* 5, 1894.

Messrs. Gilchrist & Company, McGregor, Ia.

GENTLEMEN: We have your favor of the 2nd, and note contents. You will please ship the two cars barley to replace the two cars destroyed in the late fire.

We report a good demand for barley at unchanged prices, and request you to keep us advised of your offerings. We remain,

Yours truly, TEICHMAN COMMISSION CO.

ST. LOUIS, MO., *Nov.* 7, 1894.

Messrs. Gilchrist & Co., McGregor, Iowa.

GENTLEMEN: We have your favors of the 5th, and note contents. We also note your order to the Ossian agent to ship us two cars barley in place of the two cars burned, which is satisfactory.

Our barley market continues very dull, without any urgent demand for the present.

Please keep us advised of your offerings. We remain,

Yours truly, TEICHMAN COMMISSION CO.

McGREGOR, IOWA, *Nov.* 2, 1894.

Teichman Com. Co., St. Louis.

GENTLEMEN: We have your favor of first inst., and note same. We notified C., M. & St. Paul officials about the loss and will make claim at once, or as soon as we get all the papers—we will hurry affidavit of our Ossian agent tomorrow morning; we need the bills lading for the cars which you have.

Please send us at once—so can get our claim in promptly.

Better get balance of cars delivered before any more disasters. Chicago & Milwaukee are beating you on barley now; as soon as St. Louis will pay up, we will offer more.

Yours, GILCHRIST & CO.

314

McGREGOR, IOWA, *Nov.* 5, 1894.

Teichman Com. Co., St. Louis.

GENTLEMEN: Yours of the 3rd to hand with bills lading for two cars burned at East St. Louis.

We order our Ossian man to ship you the 2 cars to fill the sale in place of two cars burned.

Yours truly, GILCHRIST & CO.

We will likely send samples of other lots the latter part of week, if weather clears up so can clean it.

G. & CO.

Testimony of Jacob Rau.

JACOB RAU, being first duly sworn, testifies as follows:

Direct examination by Mr. HANSON:

Q. On the 10th day of October, 1894, did you ship from Wykoff, Minnesota, in St. Paul car # 46064, consigned to the Orthwein Grain Company, St. Louis, a car-load of barley?

A. Yes, sir.
Q. Did you also ship a car-load of barley from Wykoff, Minnesota, on the 16th of the same month, in St. Paul car # 43223, consigned to the Orthwein Grain Company, St. Louis?
A. Yes, sir.
Q. You may state, Mr. Rau, the facts concerning these two shipments; the arrangement under which they were shipped.
A. They were shipped to be sold there by the commission-house of Orthwein Grain Company.
Q. Was the Orthwein Grain Company, in the matter of this barley, acting as your agent to sell it?
A. Yes, sir.
Q. Had you made any sale of the barley to the Orthwein Grain Company?
A. No.
Q. State fully in your own way just the arrangement which existed between you and the Orthwein Grain Company in respect to these two cars of barley.
A. I shipped them cars to them, to be sold at the best price they could get for it.
Q. Now, in selling this barley for you, in what way did the Orthwein Grain Company act for you?
A. They charged me a commission.
Q. Did they act as your commission agents?
A. Yes.
315 Q. You had not made any sale whatever of this barley to them?
A. No.
Q. The Orthwein Grain Company never had sold these cars of barley for you, had they?
A. No, sir.
Q. They were destroyed by fire at East St. Louis as you understand?
A. Yes, sir.

Mr. WARREN: I object to his understanding.

Q. Are you the Mr. Rau, the Jacob Rau, named in this petition?
A. Yes, sir.
Q. Were you the owner of this barley at the time it was destroyed by fire at East St. Louis?
A. Yes, sir.
Q. Are you still the owner of the claim arising out of that destruction?
A. Yes, sir.
Q. No one else has any interest in the claim?
A. No, sir; no one.
Q. You are in business in Wykoff, Minnesota, are you?
A. Yes, sir.

Cross-examination by Mr. WARREN:

Q. How was this arrangement made, Mr. Rau, as to the selling of this barley between yourself and the Orthwein Grain Company?

A. I just sent the barley to them and let them sell it for what they could get for it.

Q. Was there any letters, any correspondence passed between you and them in regard to it?

A. Yes, sir.

Q. Have you that correspondence in your possession?

A. No, sir.

Q. Do you know where it is?

A. Yes, I know where it is, it is burned up. At one time last spring, in the store, them papers all burned up and most of my grain papers.

Q. You may state the substance of the correspondence which passed between you and the Orthwein Grain Company in reference to this sale?

A. Well, sir, after the cars got in, as far as I can remember, they wrote me that they had samples out of the cars, I guess on Saturday the car got in, and as far as I can remember, they took
316 samples out and wrote on Monday, that there was no market, I guess, on Saturday, and they didn't make sale of it, and that there was a fire the day before, or the night before, and they didn't know but the barley was burned up; that they would see and let me know, and in a few days afterwards I got notice that the barley was burned and I should send them the bill and they would collect it for me from the railroad company.

Q. Was there any correspondence passed between you previous to the shipment regarding it?

A. No; I generally sent to them when I had a car or two, and kept shipping to them right along. I had some sold to arrive but not these two cars.

Q. You did then sometimes make a sale to these people?

A. Yes.

Q. But in this case you simply forwarded the cars to them?

A. Yes, sir.

Q. Then did you advise them what you wanted done with them?

A. No, no advice.

Q. How did they know what you wanted done with those cars?

A. They know if I send them there I want them sold; they must know that when they got a commission-house. That was sent there to be sold.

Q. What arrangement as to commission did you have in regard to these two cars?

A. I didn't have no arrangement.

Q. I believe you stated that you were to pay them a commission?

A. Oh, yes; of course.

Q. What arrangement did you have?

A. The commission was two cents a bushel.

Q. When was that arrangement made?
A. That was the regular price; I don't know whether it was that at that time or not, because I got notice that they were only charging one cent. They wrote me that this barley would be worth 57 cents less freight in St. Louis.
Q. Before or after you shipped it?
A. After they had the sample taken out of the cars.
Q. I believe this barley was consigned direct to Orthwein & Company?
A. Yes, sir.
Q. Did you advise the common carrier that they were simply acting as your agents and that the barley was yours?
A. No, sir; I never did.
Q. Do you know whether or not the consignee Orthwein
317 & Company made any change in the destination of the barley after it has started along the line?
A. I don't think they did.
Q. I ask you if you know?
A. I never heard that it was changed; I suppose it always went the way it was billed by the owner.
Q. Did you select the route it should go on after leaving the road on which you shipped it, or did the consignee?
A. No, sir; I gave it to the Milwaukee road and had nothing to do with what route it went after it left their road.
Q. You did not instruct the Milwaukee road over what line to send it after it reached the end of their road?
A. No, sir.
Q. Do you know whether or not the consignee did?
A. No, I don't believe they did.
Q. Do you know about it?
A. Well, they had no right to change it after it was consigned to the Milwaukee road.
Q. You had consigned it to the Orthwein Grain Company?
A. Yes, sir.
Q. You don't know whether or not he changed the destination?
A. He never changed me any; never changed any of my bills of lading.
Q. Did you receive a bill of lading for these cars of barley?
A. No, sir; I did after it was burned; called for it then.
Q. Previous to that, you did not receive a bill of lading?
A. No; hardly ever.
Q. You simply advised the consignee by letter that you had shipped the car?
A. Yes, sir.
Q. Can you produce that letter or a letter-press copy of it?
A. No, sir; it was all burned up at that time.
Q. You may state the substance of that letter?
A. I have stated that; haven't I? What do you mean I should state?
Q. State what you wrote to the assignee?

A. I wrote car so and so, with such and such a number and the day and put it in the letter.

Q. You did not advise them what to do with it?

A. No, sir; they know their business when it goes there to sell it.

318 Redirect examination by Mr. HANSON:

Q. When the barley is received at St. Louis by the Orthwein Company, they sell it and account to you?

A. Yes, they give me credit and send me notice of the amount.

Recross-examination:

Q. Do you know whether or not of your own knowledge this barley was ever delivered to the consignees?

(Objected to because the pleadings show that it was destroyed, and the stipulation shows it was destroyed at East St. Louis.)

A. No; I don't know.

Testimony of J. H. Ellsworth.

Mr. J. H. ELLSWORTH being first duly sworn, testified as follows:

Direct examination by Mr. HANSON:

Q. You reside at McGregor?

A. Yes, sir.

Q. And are the president of the Huntting Elevator Company, one of the petitioners named in this proceeding?

A. Yes, sir.

Q. Did the Huntting Elevator Company make the following shipments of barley: September 24th from Prairie du Chien, St. Paul cars Nos. 11836 and 33090; October 13th from Lime Spring, Iowa, St. Paul car No. 34574; October 15th from Lime Spring, St. Paul car No. 32194; October 18th from Lime Springs, car No. 43080; October 12th from Prairie du Chien, St. Paul car Nos. 12; October 20 from the same place, St. Paul cars Nos. 178, 7286 and 16802 (in some places in this record appearing as No. 16502) and St. Paul car No. 46648, all consigned to the Teichman Commission Company, St. Louis, Missouri?

A. Yes, sir; they did.

Q. You may state, Mr. Ellsworth, the arangement, if any, under which these shipments of barley were made by the Huntting Elevator Company, to the Teichman Commission Company at St. Louis.

A. They were made to apply on ales which had been made to the Teichman Commission Company for barley to be delivered at St. Louis.

Q. What were the terms of the sale under which this barley
319 was shipped both with reference to prices, deliveries, payment of freights, etc.?

A. We sold it to be delivered at St. Louis; part of it at 56 cents per bushel and part at 54 cents. The Lime Spring barley we de-

livered at 56 cents a bushel, five thousand bushels; the Huntting Elevator Company was to pay the freight. In other words it was a sale of barley to net us these prices in St. Louis.

Q. The barley was all to be delivered at St. Louis?

A. Yes, sir.

Q. Who owned this barley at the time it was destroyed by fire?

A. The Huntting Elevator Company.

Q. Any other firm, person or corporation have any interest in it?

A. None whatever.

Q. What, if anything, was afterwards done toward filling this contract for the sale of certain quantities of barley——

(Objected to.)

Question continued: In place of these cars of barley which were destroyed at East St. Louis?

A. We shipped other barley to fill the sale.

Q. Why was this done?

A. We had made a sale of a certain amount of barley deliverable at St. Louis; the barley was not delivered and we supplied the deficiency.

Q. And so this subsequent shipment was made in pursuance of a contract which you had with the Teichman Commission Company to deliver to them at St. Louis a certain quantity of barley at certain prices?

A. Yes, sir.

Q. And these subsequent shipments were made necessary by the destruction by fire of the barley in these cars which I have named in my first question?

A. Yes, sir.

Q. Who was the owner of the claim arising out of the destruction of this barley?

A. The Huntting Elevator Company.

Q. Has any person, firm or corporation any interest in this claim?

A. No, sir.

Cross-examination:

Q. Were the terms of this sale made known to you and by you to the consignee?

A. I presume it was made known to us; generally our sales were made by telegram—acceptances by wire and confirmed by mail.

320 Q. Who made the offer to buy in these cases?

A. I could not say positively whether we made it or they; sometimes they made an offer and we would accept, and sometimes we offered them and they would accept.

Q. In each one of these cases those offers and acceptances were made by mail or wire, or both—is that a fact?

A. They were made by wire, that is the acceptances, and confirmed by correspondence.

Q. Have you all the correspondence which relates to the sale of these various shipments in your possession?

A. The sales were made in round lots and these shipments apply on those lots; we have the letters showing the sales were confirmed, the three different sales on which this barley applied.

By Mr. HANSON: These ten cars of barley were shipped to apply on sales of three different kinds?

A. Yes, sir; three different prices.

Q. Three prices, the barley to be delivered at St. Louis?

Q. Yes, sir.

Mr. WARREN: Are these three letters which you received from the consignee in reply to your offers of sale?

A. Yes, sir.

Q. Are they in the condition in which you received them?

A. The same.

Q. Has there been any alterations or additions made to them?

A. Not to my knowledge.

Q. I will call your attention to the letter dated September 15, 1894, which has the words "to be shipped to us here via East St. Louis" underscored.

A. Oh, that is simply my notation to it; I underscored it in lead pencil to call attention to it sooner; that is all; I made the pencil notation marks.

Q. There were none on there when you received the letter?

A. No, sir; not to my knowledge.

(Counsel for defendant- objects to the witness' testimony-in-chief relating to the contents of telegrams and letters which passed between them in regard to these three sales.)

Q. The letter dated October 10, 1894, contains these words: "We have your favor of the 8th inst. and note contents." I will ask you if you have a letter-press copy of that letter?

—. I presume we have; we copy everything that goes out of the office; I haven't it with me.

Q. I will ask you to produce it and make it a part of your evidence; I also wish to ask the witness to produce the telegrams, or copy-s of them, and of all other correspondence which passed between them in relation to these sales.

321 (The witnesses whose depositions are now being taken here state that they will use their best endeavors to find all the correspondence, letters and telegrams which passed between the petitioners and the commission-houses of Teichman Commission Company and the Orthwein Grain Company, and whatever letters or telegrams they are able to find they will send to the notary for identification and filing with their testimony. The witness, Mr. Rau, states that all his correspondence has been destroyed by fire which destroyed the building in which they were).

Q. Mr. Ellsworth, do you know of your own knowledge whether or not this barley was delivered to the consignee?

A. No, sir.

Q. Did you give the common carrier notice that the barley was yours until it reached St. Louis?

A. No, sir.

Q. Do you know of your own knowledge whether or not the consignee changed the destination of the barley?

A. I do not.

Q. Do you know of your own knowledge whether or not the consignee ever accepted the barley?

A. I do not.

Q. Do you know where the consignee was in the habit of receiving barley shipments made by you to him?

A. Where, did you say?

Q. Yes.

(Counsel for petitioners objects on the ground that it is entirely incompetent and immaterial as to what the habit was. The testimony shows that this barley was all sent to St. Louis, and it is immaterial as to what the habit of the consignee was in respect to it.)

A. I do not know, unless at St. Louis.

Q. You do not know of your own knowledge?

A. No, sir.

Mr. HANSON: I think you misunderstood one of Mr. Warren's questions as to whether these ten car-loads of barley had ever been accepted by the commission-house; you know it never had, and that other barley was shipped to take its place. You know that the barley had never been accepted by the commission-house?

A. Yes, sir.

By Mr. WARREN: Do you know of your own knowledge, or did they simply tell you that it had not been delivered?

A. We shipped other barley to take its place.

Last question repeated.

A. They notified us that the barley had not been delivered; that it had been burned.

322 Q. Then you do not know of your own knowledge?

A. No, sir.

Question by Mr. HANSON: Mr. Ellsworth you were asked whether when you delivered this barley to the railroad company, you notified the railroad company who owned it, whether you owned it or the consignees owned it, and you stated that you did not. Is that ever done, or is it customary for shippers to notify the railway company who owns the property?

A. Not to my knowledge.

Q. Or the terms under which it is sold?

A. Not to my knowledge; we have never done so.

Q. When you deliver barley to the St. Paul Railway Company you do not notify them of the terms under which you are shipping it?

A. No, sir.

Q. Mr. Ellsworth, what was the understanding between the Huntting Elevator Company and the Teichman Commission Company

in reference to the ownership of this barley that you have testified to?

A. The understanding was that we had sold them so much barley at a stipulated price, to be delivered at St. Louis.

Q. Freight paid?

A. Freight paid, and in the case of the barley shipped from Prairie du Chien the freight was prepaid; I paid the freight.

Q. Was that understanding acted upon in making these shipments of barley, that you were the owner of the barley until it was delivered at St. Louis?

A. So far as we were concerned.

Q. Has the Teichman Commission Company ever made any claim for this barley or ever claimed any interest or ownership in it?

A. Not to my knowledge.

By Mr. WARREN: Mr. Ellsworth, you may state how this understanding was arrived at, whether by correspondence or verbally.

A. It was by correspondence, letters and telegrams.

Q. And you have stated that you will produce this correspondence?

A. I will if I can.

(The following correspondence is attached to and made a part of the evidence of Mr. J. H. Ellsworth, pursuant to his statement that he will use his best endeavors to find all the correspondence which passed between his company and the Teichman Commission Company in relation to the sale of the barley referred to in his evidence.)

323 *Telegrams Relating to the Sale of Lime Spring Barley, 3 Cars of which were Burned.*

Received at McGregor, 10/10, 1894.
Dated St. Louis, Mo.

To Huntting Elevator Co.:

Do you accept fifty-five net five thousand McNally sample?

TEICHMAN COMMISSION CO.

Teichman Commission Co., Oct. 10, 1894.
St. Louis, Mo.

No, we cannot accept.

HUNTTING ELEVATOR CO.

Received at McGregor, 10/10, 1894.
Dated St. Louis, Mo.

To Huntting Elevator Co.:

Bid fifty-six net, leaving small margin shipment via East St. Louis.

TEICHMAN COMMISSION CO.

OCT. 10, 1894.

To Teichman Commission Co., St. Louis, Mo.:

Accept 56, five thousand Lime Spring barley.

HUNTTING ELEVATOR CO.

Letters and Telegrams Relating to the Replacement of the Ten Cars of Barley Destroyed.

ST. LOUIS, MO., *Oct.* 29, 1894.

Huntting Elevator Co., McGregor, Iowa.

GENTLEMEN: We have your favor of the 26th and note contents. Our barley market was more active today; however, prices obtained were rather slightly easier, at least we could not sell any of your barley at your limits.

Last night a fire in the yards of the J. & S. E. R. R. in E. St. Louis destroyed their freight warehouse and a great many cars of barley on adjoining tracks. We think likely some of your barley was amongst the cars destroyed; however, could not find out anything definite to-day. Will let you know as soon as we find out.

We remain, yours truly,

TEICHMAN COMMISSION CO.

324 Received at McGregor, 11/3, 1894.
Dated St. Louis, Mo.

To Huntting Elevator Co.:

All barley destroyed must be replaced, being held to contract.

TEICHMAN COMMISSION CO.

Nov. 3, 1894.

To Teichman Commission Co, St. Louis, Mo.

Will replace the barley. See letter.

HUNTTING ELEVATOR CO.

MCGREGOR, IOWA, *Nov.* 3, 1894.

Teichman Commission Co., St. Louis, Mo.

DEAR SIRS: We received a message from our agent at Lime Spring, this morning, which indicates that he had not the barley on hand, and would take until the 15th before he could get it, and as our competitors have put up the price of barley in that section of the country, we are quite in doubt whether we can buy so as to replace the three cars burned at the price sold for; so wires you "Barley not on hand, fill sale by 15th," and have your message this afternoon, saying all barley destroyed must be replaced, being held to contract. To which we answered would fill the sale. We will try to get this Lime Spring barley and ship by the 15th. We cannot promise it before, but the seven cars from Prairie du Chien will get off as soon as possible.

Yours truly,

(Signed) HUNTTING EL. CO.,
By J. H. ELLSWORTH, *Pres't.*

ST. LOUIS, MO., *Nov. 5th,* 1894.

Huntting Elevator Co., McGregor, Io.

GENTLEMEN: We have your favors of the 2nd and 3rd, and we are pleased to note that you will ship other barley in place of the cars lost in the late fire.

Our barley market is firm and unchanged in price, a better demand having developed.

Please keep us advised of your offerings, and oblige,

Yours truly, TEICHMAN COMMISSION CO.

325 *Lime Spring Barley.*

(Shipped to replace barley burned.)

We ship you today the following:

Car No.	Grain.	Grade.	Weight.	Date of shipment.
42698	Barley.....	Sample	40,000	11/14, 1894
31456	Barley.....	Sample	40,000	11/15, 1894
37596	Barley.....	Sample	40,000	11/22, 1894

The above three cars were shipped to replace barley burned on track at East St. Louis.

HUNTTING ELEVATOR CO.,
By J. H. ELLSWORTH, *Pres't.*

PRAIRIE DU CHIEN, WIS., *Feb.* 6, 1895.

This is to certify that I, J. P. Barnum, superintendent of elevator at Prairie du Chien, Wisconsin, for Huntting Elevator Company, caused to be loaded the cars given below, with amounts and grades of barley, and consigned to Teichman Commission Company, St. Louis, Mo., on dates as follows, to replace seven cars burned on track at East St. Louis, Ills.

Nov. 9, 1894.	Car C., M. & St. P.	#21036	Wt. 40,000	Grade 3
Nov. 9, 1894.	Car C., M. & St. P.	#34988	Wt. 35,100	Grade 3
Nov. 9, 1894.	Car C., M. & St. P.	#46972	Wt. 41,900	Grade 2
Nov. 9, 1894.	Car C., M. & St. P.	#37072	Wt. 31,400	Grade 2
Nov. 12, 1894.	Car C., M. & St. P.	#32512	Wt. 43,250	Grade 3
Nov. 16, 1894.	Car C., M. & St. P.	#46414	Wt. 55,600	Grade 3

Respectfully submitted.

J. P. BARNUM, *Sup't.*

Letters and Telegrams Relating to the Sale of Two Lots of Barley from Prairie du Chien, Seven Cars of which were Burned.

Received at McGregor, 9, 13, 1894.
Dated St. Louis, Mo.

To Huntting Ele. Co.:

Offered 56 net ten thousand No. 2. Wire answer.

TEICHMAN COMMISSION CO.

Received at McGregor, 9/15, 1894.
Dated St. Louis, Mo.

To Huntting Elevator Co.:
Impossible to improve on our bid of yesterday.
TEICHMAN COMMISSION CO.

McGregor, Ia., *Sept.* 15, 1894.

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Teichman Commission Co., St. Louis, Mo.

Dear Sirs: Your telegrams received saying it is impossible to improve of your bid. We wired acceptance on 25,000 of our No. 2 sample barley. Please send us directions at once, as we must get it out.

We have yours of the 14th. If you can get good stiff prices on our No. 2 samples, we will give you the sole handling of it, but hope to get more than 56 net for the next lot. Think we can do better than that in Cincinnati.

Yours truly,
(Signed) HUNTTING EL. CO.

Sept. 15, 1894.

To Teichman Commission Co., St. Louis, Mo.:
Accept 56 net twenty-five thousand sample 2.
HUNTTING ELEVATOR CO.

St. Louis, Mo., *Sept. 15th*, 1894.

Huntting Elevator Co., McGregor, Iowa.

Gentlemen: We have your telegram accepting our bid of 56c. net for 25,000 bushels sample barley, to be shipped to us here via East St. Louis.

Our barley market not having opened yet fairly owing to the absence of brewers, our object in taking this lot of barley was simply to be prepared selling whenever our brewers enter the market, and we hope you will give us the control in this market of your barley. Also please wire us on receipt lowest price for a round lot of your sample #3 barley, at same time express us a bushel for a sample. We remain,

Yours truly,
—— ——.

McGregor, Iowa, *Sept. 20th*, 1894.

Teichman Commission Co., St. Louis, Mo.

Dear Sirs: We have yours of the 19th; please wire us best offer on 10,000 or 20,000 of our No. 3 sample barley delivered St. Louis.

Yours truly,
(Signed) HUNTTING EL. CO.

Copy.

Received at McGregor, 10/1, 1894.
Dated St. Louis, Mo.

To Huntting Ele. Co.:
Sold twenty thousand No. 3 fifty-four net via East St. Louis.
TEICHMAN COMMISSION CO.

327 McGREGOR, IOWA, *Oct.* 1, 1894.

Teichman Commission Co., St. Louis, Mo.

DEAR SIRS: We have your telegram saying sold 20,000 of our No. 3 at 54c. net via East St. Louis, and we consider it a good sale. When you can get 54 for 10,000 or 20,000 more please wire us, as we are thoroughly sold up on all barley we have on hand.

Yours truly,

(Signed) HUNTTING ELEVATOR CO.

ST. LOUIS, MO, *Oct.* 1, 1894.

Huntting Elevator Co., McGregor, Iowa.

GENTLEMEN: We wired you sale today of 20,000 bus. your #3 barley at 54c. net here, to be shipped via East St. Louis.

We have but a small margin left us on this sale, but we did not like our neighbors to head us off. Ship 10,000 bus. of this barley at once in large cars, and the balance let follow about the middle of this month or later.

Yours truly, TEICHMAN COMMISSION CO.

Testimony of Henry Rippe.

Mr. HENRY RIPPE, being first duly sworn, testified as follows:

Direct examination by Mr. HANSON:

Q. You live at Fairmount, Minnesota?

A. Yes, sir.

Q. Are you the Henry Rippe the petitioner herein?

A. Yes, sir.

Q. On the 8th of October, 1894, did you ship a car-load of barley in St. Paul, car No. 12611, consigned to the Orthwein Grain Company, St. Louis?

A. Yes, sir.

Q. On October 9th, 1894, did you ship another car of barley in St. Paul, car No. 3433, consigned to the "Orthwein Grain Company," St. Louis?

A. Yes, sir.

Q. You may state the arrangement under which these two cars of barley were shipped to the Orthwein Grain Company.

A. Well, the Orthwein Grain Company is a commission-house and we shipped them to sell for us on commission.

Q. Had you made a sale of this barley to the Orthwein Grain Company, or was it shipped to them to sell for you as agents?

A. They were to sell it as my agents, or for me.

Q. So they acted as your agents?

328 A. Yes, sir.

Q. Were you the owner of this barley at the time it was destroyed?

A. Yes, sir.

Q. Are you still the owner of the claim arising out of its loss by fire?

A. I am.

Q. Is any other person interested in any manner in it?
A. No, sir.

Cross-examination by Mr. WARREN:

Q. Have you any correspondence, Mr. Rippe, relating to this matter?
A. Yes, sir.
Q. Have you it with you?
A. I have all of theirs, but only one of my own letters.
Q. I will ask you to produce all the correspondence which relates to these two cars and make it a part of your evidence. Did you notify the railroad company that this barley was yours?
A. I had the commission-house do that.
Q. At the time you made the shipment, did you notify the railroad company that it was your barley, and not that of the consignee?
A. We always shipped in our own name; I consigned it to the Orthwein Grain Company, but I was the shipper.
Q. Did you notify the railroad company that the Orthwein Grain Company was simply acting as your agent when you shipped the barley?
A. I don't think that was really necessary; we tell the railroad company we want to ship to St. Louis, and they set us in cars, and then we load them and take the receipt for the same.
Q. Then you did not notify them that it was your barley, and that the consignee was simply acting as your agent in receiving the same?
A. I don't hardly get on to that some way; we never do.
Q. Did you or did you not do it in these two cases?
A. We shipped these the same as all our cars—no difference.
Q. Did you know whether or not the consignee made any change in the destination of the cars?

(Counsel for petitioners objects on the ground that it is not proper cross-examination, and not a proper subject for examination under the order under which this testimony is taken.)

A. They did not to my knowledge.

329 Redirect examination:

Q. You never notify the railroad company when you deliver shipments of barley or other grains, whether you own it or some one else owns it, do you?
A. No, sir.
Q. These letters which you have referred to in your testimony, not one of them except the typewritten letter signed Henry Rippe, dated 10-11-'94, relate to the two cars of barley in question, do they?

(Counsel for defendant- object to the witness stating the contents of the letters here present.)

A. No, sir.

Q. They relate entirely to the mode of doing business between you and the Orthwein Grain Company?
A. Yes, sir.

(The witness now offers the letters referred to, to the opposing counsel for him to use in evidence so far as they bear upon the manner in which the Orthwein Grain Company did the witness' business at St. Louis, but not as relating to the two cars in question.)

Recross-examination:

Q. You may state whether or not, Mr. Rippe, these two cars were shipped in pursuance to some definite order or instruction or request, or whether or not they were shipped in pursuance to the general custom of doing business between you and the consignee?
A. They were shipped in accordance with the general custom of doing business with the consignee.)

Redirect examination:

Q. What was that general custom?

(Counsel for defendant- objects to the witness stating the general custom if the letters show the general custom under which the Orthwein Company acted for him at St. Louis.)

Q. Did he act as your agent?
A. I send the barley to him and he sells the barley and then returns me the money; very often we draw on him, so he is just the agent; he didn't buy it out and out.
Q. You simply send it to him for sale?
A. Yes, sir.
Q. And when he has sold it he accounts to you?
A. Yes, sir.
330 Q. And he has never accounted to you for these two cars?
A. No, sir.
Q. And you are still the owner of the claim?
A. Yes, sir.

Recross-examination:

Q. I hand you this letter dated October 26, 1894, and ask you whether or not that states the general custom of your agent in St. Louis, in handling of shipments made by you to him.

(Counsel for petitioners objects to the letter for the reason that it relates to other matters than the matters which can be testified to under the order of the court by which this testimony is taken; that is, I object to so much of that letter which relates to matters not within the order of the court under which this testimony is taken.)

Mr. WARREN: I wish to say that the witness is attempting to testify in regard to the general custom existing between himself and his agent in St. Louis as to the manner of their doing business,

which general custom the witness has heretofore testified is set out in a number of letters of which this is one.

WITNESS: This is the only letter I have got from them which reads just like that, but I don't know whether that is their general custom or not.

Q. Do you know the signature of your agent at St. Louis?

A. Yes, sir.

Q. Is that the signature of your agent attached to that letter?

A. Yes, sir.

(Counsel for defendant- requests the witness to produce the letter and make it a part of his evidence.)

Redirect examination:

Q. Mr. Rippe, after you delivered these cars of barley, or any carload of barley to the St. Paul Railway Company, which cars were consigned to the Orthwein Grain Company at St. Louis, did you afterwards give any orders to anybody for holding that barley or making any disposition of it?

A. No, sir.

Q. If the barley was held at any place it was done without any order from you was it?

A. Yes, sir.

Q. And without any knowledge on your part?

A. Yes, sir.

Q. Is this letter of October 26, 1894, the first and only letter of the kind which you ever received from the Orthwein Grain
331 Company, in which they tell you that after the barley comes to East St. Louis, it is held there until disposition is given to the railroad company at East St. Louis, and the road pays the transfer?

A. Yes, that is the first time I knew anything about it.

Q. Did you have anything to do with holding the property there?

A. No, the barley was slow going in and I wrote them about it. Yes that is the first letter I had of that kind, and I presume it was because I wrote them that the cars were slow going in.

Q. But you didn't know why?

A. I didn't know why, and that was why I wrote, and that must be their reply to me.

Q. You had nothing to do with their being slow?

A. That is the reason I wrote them; if I had had, I should have hustled them along faster.

Recross-examination:

Q. Upon receipt of this letter did you instruct your agent not to allow the shipments to be held in East St. Louis?

A. I do not think I did.

Q. What did you do upon receipt of the notice contained in this letter, to wit: "All your shipments come via J. S. E. R'r'd into East St. Louis, and are held there until disposition is given them, and they pay the transfer," in regard to instructing your agent?

A. I don't think I wrote them anything; I left it to their mode of doing business; I could not tell them what to do down there.
Q. You allowed them to handle that end of the business?
A. Yes, sir.

(The witness now offers in evidence letters from William D. Orthwein Grain Company to Henry Rippe, under date of September 19, 1894, October 10, October 15, October 20 and October 23, 1894, and letter from Henry Rippe to William D. Orthwein Grain Company, dated 10/11/94/, for the purpose of showing the manner in which the Orthwein Grain Company acted as agent for Henry Rippe in the handling and disposition of the barley which was shipped by Henry Rippe to the Orthwein Grain Company.)

Letters received in evidence and marked respectively "Rippe Exhibit- A, B, C, D, E, F," and hereto attached.

Mr. WARREN: Let the record show that this witness is sworn for the receiver, and I now offer this witness as my witness, and in connection with this matter I offer the letter dated October 26, 1894, addressed to the witness, signed by the Orthwein Grain Com-
332 pany. I offer the letter in evidence as one of a number received by him showing the custom of transacting business between himself and his agent.

Mr. HANSON: I object to so much of this letter which reads as follows: "All your shipments come via J. S. E. R'r'd into East St. Louis, and are held there until disposition is given them and they pay transfer," for the reason that that portion of the letter is not within the order of the court under which this testimony is taken.

Letter received in evidence marked "Rippe—Exhibit G," and hereto attached.

RIPPE EXHIBIT "A."

ST. LOUIS, MO., *Sept.* 19, 1894.

Henry Rippe, Esq., Fairmount, Minn.

DEAR SIR: We today sold your car #20002 B/barley at 57c. tracks this side, and trust the sale will be satisfactory. The weather is now cool, and we think the season far enough advanced that there will be no doubt our maltsters will be able to continue operations from now on, this insuring a market for all offerings. If above value is satisfactory we would recommend free shipments. Expect some of your other cars tomorrow.

Yours truly,

WM. D. ORTHWEIN GRAIN COMPANY.

RIPPE EXHIBIT "B."

ST. LOUIS, MO., *Oct. 10th*, 1894.

Henry Rippe, Esq., Fairmount, Minn.

DEAR SIR: Yours of the 8th inst. advising shipment of car barley at hand.

Wired you whether to sell five cars more at 56c., and have your

answer to do so. We have no sample left, and will have to await arrival of above car before we can do anything.

Yours truly,

WM. D. ORTHWEIN GRAIN COMPANY.
W. E. ORTHWEIN, *Secretary.*

RIPPE EXHIBIT "C."

ST. LOUIS, MO., *Oct. 15th*, 1894.

Henry Rippe, Esq., Fairmount, Minn.

DEAR SIR: Your favor of the 12th inst. to hand and note contents.

333 Will sell your barley on arrival best we can. Your car No. 609 has been here for several days, but as we could not get over 55c. for it, we have not sold it.

Market weak and tending lower.

Yours truly,

W. E. ORTHWEIN, *Secretary.*

RIPPE EXHIBIT "D."

ST. LOUIS, MO., *Oct. 20th*, 1894.

Henry Rippe, Esq., Fairmount, Minn.

DEAR SIR: Your favor of the 18th inst., as well as sample barley, to hand today.

We could not get a bid to arrive, as there was only one buyer on 'change, and he bought nothing but spot barley.

Hope to be able to wire you a bid on Monday, although all of our buyers are holding off looking for lower price.

Yours truly,

WM. D. ORTHWEIN GRAIN COMPANY.
W. E. ORTHWEIN, *Secretary.*

RIPPE EXHIBIT "E."

ST. LOUIS, MO., *Oct.* 23, 1894.

Henry Rippe, Esq., Fairmount, Minn.

DEAR SIR: Today we succeeded in getting a bid of 55c. for five cars of your barley which we accepted, considering it a very good bid in our present market.

Will deliver same out of barley already shipped, provided same is up to sample sold by. The party to whom we still owe 3 cars on 1st sale at 56c. gave us notice a few days ago that he would not take it any more, the barley being out too long.

We, of course, will try our best to get him to take it when barley arrives, but should he absolutely refuse, will deliver same on today's sale, in which case there are still 2 cars unsold of what you have already shipped.

Market still dull and dragging.

Yours truly,

WM. D. ORTHWEIN GRAIN COMPANY.

RIPPE EXHIBIT "F."

10/11/94.

Wm. D. Orthwein Grain Co., St. Louis, Mo.

GENTLEMEN: Ship your car 3433 barley from Grand Meadow. This is a nice choice car of barley, and better than the cars
334 sold to arrive. If any of my cars arrives and you can get a premium on them over what they sold at, wish you would do so, and will replace them by further shipments.

Yours truly, HENRY RIPPE.

RIPPE EXHIBIT "G."

ST. LOUIS, Mo., *Oct.* 26, 1894.

H. Rippe, Esq., Fairmount, Minn.

DEAR SIR: Yours of the 24th to hand, with letter from your agent, which we herewith return. All your shipments come via J. S. E. R'r'd into East St. Louis, and are held there until disposition is given them and they pay transfer.

Two of your cars, #11722 and #6320, arrived this afternoon, and expect the others will soon follow.

Barley market quiet; nothing new to report.

Yours truly,

WM. D. ORTHWEIN GRAIN COMPANY.

Testimony of S. Y. Hyde.

Mr. S. Y. HYDE, being first duly sworn, testified as follows:

Direct examination:

Q. You reside at La Crosse, Wisconsin, Mr. Hyde?

A. Yes, sir.

Q. You are the president of The S. Y. Hyde Elevator Company, the petitioner herein?

A. Yes, sir.

Q. On the 29th of September, 1894, did the S. Y. Hyde Elevator Company at Wykoff deliver to the St. Paul Railway Company a car of barley in St. Paul cars #680, consigned to the Teichman Commission Company, St. Louis, Missouri?

A. That is according to the records.

Q. On the 16th day of October did the S. Y. Hyde Elevator Company, at La Crosse, deliver to the St. Paul Company barley in cars, as follows: C., B. & Q. cars, Nos. 10814, 11962, 14385 and 1919, and one other car belonging to the St. Louis, Belleville & Southern Illinois Railway Company, No. 20975, consigned to the Teichman Commission Company, St. Louis, Missouri?

A. That is according to the records of the business.

Q. To whom did that barley belong?

A. It belonged to the Hyde Elevator Company.

335 Q. Under what arrangement was it sent to the Teichman Commission Company at St. Louis?
A. We sold it by sample to be delivered at St. Louis.
Q. St. Louis the place of delivery?
A. Yes, sir.
Q. At a certain price?
A. Yes, sir.
Q. What in reference to the payment of freight?
A. I think it went on transit account, freight paid.
Q. Who paid it?
A. We paid it.
Q. So this barley was to be sent to St. Louis at a certain price, delivered there, freight paid by the S. Y. Hyde Elevator Company?
A. Yes, sir.
Q. This barley, it is stipulated, was destroyed by a fire at East St. Louis on the night of October 28, 1894. Did the S. Y. Hyde Elevator Company subsequently ship other barley to take the place of this barley which was destroyed?

(Counsel for defendant objects to what occurred subsequent to the fire.)

A. Yes, sir.
Q. You may state what was done.
A. As to the shipment of other barley?
Q. Yes, sir.
A. We shipped other barley to take its place, and the same amount.
Q. Now, was this the first barley which was destroyed shipped to fill a certain quantity of barley to be delivered at a certain price?
A. Yes, sir.
Q. And the subsequent shipments were made to fill the quantity on account of the loss of this first shipment?
A. Yes, sir.
Q. At the same price?
A. Yes, sir.
Q. Had any other firm, person or corporation any interest in this barley other than the S. Y. Hyde Elevator Company?
A. No, sir.
Q. Who owns the claim arising out of the loss of this barley?
A. The Hyde Elevator Company.
Q. Has any other person, firm or corporation any interest in the claim?
A. Not the slightest.

336 Cross-examination:

Q. This barley was shipped pursuant to a bargain and sale?
A. Yes, sir.
Q. How was this bargain and sale made?
A. It was by correspondence.
Q. Have you the correspondence in relation to it?
A. I suppose I have, but the man who has kept charge of those

matters is out of town and I do not know whether I can dig them out or not. He will be back day after tomorrow.

(Objection is interposed by counsel for defendant- to the witness' direct examination on the question of the contents of the correspondence relating to the bargain and sale of the barley.)

Mr. HANSON: He has not testified to the contents of any of them.

Q. Was the grain which you delivered to the common carrier up to the sample which you sent to the consignee?

A. I suppose it was; it had not reached them and I do not know. We shipped it to be up to sample; we make it up to sample; that is the idea.

Q. You made it up to sample and shipped it to them?

A. Yes, sir.

Q. Do you know, of your own knowledge, whether or not it was ever delivered to the consignee?

A. We understand it was burned.

Q. I speak of your own knowledge in reference to the matter.

A. No, sir.

Q. Did you notify the railroad company when you delivered the grain to them that you were the owner of it?

A. No, sir.

Q. Do you know whether or *or* not the consignee made any change in the destination?

A. No, sir; I do not.

Q. Will you produce all the correspondence which relates to the bargain and sale of this barley and make it a portion of your evidence?

A. I will if I can find it.

Redirect examination:

Q. You have had a great deal of experience in shipping grain, have you not, Mr. Hyde?

A. Yes, sir.

Q. Is it customary among shippers to notify the railroad
337 company, when grain is delivered to it, of the arrangement under which the shipment is made?

A. No, sir; it is not; it has never been the custom with us.

(The witness states that he will make diligent search for all telegrams and letters in regard to the sale of this barley, and if he finds them will produce them to the notary, to be made a part of his evidence in this matter.)

Q. Mr. Hyde, what was the understanding between the S. V. Hyde Elevator Company and the Teichman Commission Company in respect to the ownership of this barley?

A. The understanding was, so far as our company was concerned, that we owned the barley until it was delivered and accepted on the sale in St. Louis.

Q. Was that understanding acted upon between you and the

Teichman Commission Company that the Hyde Elevator Company was the owner of the property?

A. It was, so far as we were concerned, and they did not pay us for the barley until it arrived and was accepted.

Q. And this barley never having arrived you shipped other barley to fill its place?

A. Yes, sir.

By Mr. WARREN: Mr. Hyde, you may state how this understanding was arrived at between your company and the Teichman Commission Company, whether verbally or by correspondence?

Q. And I believe that you have stated that you will produce that correspondence?

A. Yes, sir; I will endeavor to do so.

Statement Made by Mr. Hyde.

Since giving my testimony I have examined our office files thoroughly for letters and telegrams, and have been unable to find the correspondence between the S. Y. Hyde Elevator Company, and the Teichman Company, in reference to the sale of barley, on which account the six cars of barley were shipped to St. Louis. This correspondence is either mislaid or has been lost. A man by the name of E. Clarke, who was in the employ of the Hyde Elevator Company, at and prior to the time the barley was shipped, and who had charge of the correspondence, and of preparing the papers for this claim, and who has since this barley was destroyed been discharged by the Hyde Elevator Company, on the ground that he had been defrauding it, must have in some manner, unknown to the S. Y. Hyde Elevator Company, disposed of the correspondence relating to this claim. The book in which the telegrams relating to these barley shipments were kept is missing. All the other books,
338 both before and after, are in their place, but this particular book cannot be found in the office, and I do not know where it is, nor does any one else in my office. I will continue searching, and if I find it will produce the telegrams, and will also produce the letters if I can find any. I am almost certain that this man Clarke has taken this correspondence, for the reason that other papers are also missing, which I have every reason to believe he took; for instance, tax receipts covering our property along the line of the Southern Minnesota division of the Chicago, Milwaukee and St. Paul Railway Company are missing, and copies of letters relating to the same are gone.

The contents of the telegrams and letters as near as I can now recollect, is that the telegram containing the offer to sell the barley stated that we offer you so many bushels of barley, (naming the amount) at such a price, (naming it) to be delivered at St. Louis; that the Teichman Commission Company replied to this telegram, either by wire or by letter, and perhaps by both, accepting the offer, and the barley was shipped. The only other letter relating to the matter which I recollect of, was a letter from the S. Y. Hyde Ele-

vator Company, to the Teichman Company, asking for the number of the cars of barley which were destroyed by fire at East St. Louis, and saying that we would ship other barley in place of that destroyed. We were afterwards furnished with the number of the cars which were destroyed, and other barley was shipped to the Teichman Commission Company to take the place of the barley which never reached St. Louis, or was destroyed by fire at East St. Louis, as we were advised. This is in substance what was contained in the letters and telegrams as near as I can recollect it.

Testimony of W. W. Cargill.

Mr. W. W. CARGILL, being first duly sworn, testified as follows:

Direct examination:

Q. You reside at La Crosse, Wisconsin?
A. I do.
Q. Are you the president of the W. W. Cargill Company?
A. I am.
Q. A corporation of Wisconsin, is it?
A. Yes.
Q. The W. W. Cargill Company is one of the petitioners named in these proceedings?
A. It is.

339 Q. On the 12th day of October, 1894, did the W. W. Cargill Company ship two car-loads of barley from La Crosse in St. Paul cars Nos. 32986 and 20022?
A. Yes, sir.
Q. Consigned to the Teichman Company, St. Louis?
A. Yes, sir.
Q. On the 18th of October of the same year did it ship one other car-load of barley in St. Paul, car No. 1100, consigned to the same company?
A. Yes, sir.
Q. And on the 20th of the same October another car in St. Paul, car No. 15254, consigned to the Teichman Commission Company, St. Louis?
A. It did.
Q. Who was the owner of these car-loads of barley?
A. W. W. Cargill Company.
Q. Under what arrangement were these cars of barley shipped by the W. W. Cargill Company to the Teichman Commission Company at St. Louis?
A. They were shipped on a sale made in September, two cars, 52986 and 20022, sold at 53½ cents, net. Cars 1100 and 15254 sold at 55½ cents, net. This barley was sold by sample, and the cars graded and loaded to that sample and shipped to the Teichman Commission Company at St. Louis to be delivered, two sales.
Q. To be delivered where?
A. At St. Louis.

Q. Who paid the freight under this arrangement, the Cargill Company or the Teichman Commission Company?

A. The Cargill Company.

Q. Were these cars shipped in pursuance of any agreement or arrangement by which a certain quantity of barley was to be delivered at St. Louis, at a certain price, freight prepaid?

A. They were.

Q. That was the arrangement, was it?

A. Yes, sir.

Q. That a certain quantity of barley at a certain price was to be delivered at St. Louis, freight paid, by the W. W. Cargill Company?

A. Yes, sir.

Q. Now, it appears, Mr. Cargill, that the barley in these cars was destroyed at East St. Louis by fire on the 28th of October, 1894. Now, what, if anything, did the W. W. Cargill Company subsequently do in reference to replacing this barley which was destroyed?

(Counsel for defendant objects to what occurred subsequent
340 to the fire.)

A. We shipped an equal amount of barley that was burned to fill these sales.

Q. Now why was that?

A. Because he had sold 10,000 bushels of this grade of barley at a certain price, delivered at St. Louis. These four cars failed to arrive at St. Louis, and we were compelled to ship the same amount, the same grade, to fill the sale.

Q. That is why this subsequent shipment was made?

A. Yes, sir. Car No. 15254 was damaged and sold by the Teichman Commission Company I understand, on account of the railroad company; we declined at first to take the proceeds $289.81, but later decided to take it on account, and we were credited in the claim with $289.81.

Q. You mean the receiver of the Chicago, Peoria & St. Louis Railroad Company credited you with this amount?

A. Yes, sir.

Q. Has there any other person, firm or corporation any interest or ownership in this barley than the W. W. Cargill Company?

A. No other.

Q. Who owns the claim arising out of the destruction of this barley?

A. The W. W. Cargill Company.

Q. Any other firm, person or corporation any interest in it?

A. None whatever.

Cross-examination:

Q. Was this shipment made in pursuance to a bargain and sale?

A. It was.

Q. How was this bargain made, verbally, or by written instructions?

A. Telegrams.

Q. Have you the correspondence?
A. Not complete.
Q. Do you know where it is?
A. Part of it, here is one letter (handing letter to counsel).
Q. You say there was other correspondence beside the letter dated September 28th, 1894, addressed to and signed by the Teichman Commission Company, which passed between you relating to this sale?

A. Well, I don't know; I guess that covers about all.

341 Q. That letter covers all the correspondence, covers the whole bargain both verbal and written in regard to this sale?

A. Yes, sir.
Q. I will ask you to produce that letter and make it a part of your evidence.
By Mr. HANSON: This letter shows that it is not all.
WITNESS: He does not ask for mine, does he?
Mr. WARREN: I ask you to produce that letter from Teichman Commission Company to you; is there any correspondence from you to the Teichman Commission Company?
A. Yes, sir.
Q. I will ask you if you have that, or a copy of it, in your possession.
A. I have got it in the office.
Q. I will ask you to produce it and make it a part of your evidence. You may state whether or not you notified the railroad company, at the time of shipment, that you were the owner of this barley.
A. No, sir.
Q. You may state whether or not you know of your own knowledge whether this barley was delivered to the consignee.
A. Of my own knowledge?
Q. Yes.
A. I suppose that would have to be eyesight. No, I do not know of my own knowledge. I do not know anything about it of my own knowledge.
Q. Do you know of your own knowledge whether the consignee ever changed the destination of this barley?
A. No.

Redirect examination:

Q. He had no right to change it, or interfere with it, had he?
A. None whatever.

(Counsel for defendant objects to the last question as being one of law and not of fact.)

Q. Did you ever in any manner authorize the consignee to change the destination of this barley?
A. I did not.
Q. Or interfere with it in any way?
A. No way whatever.

Q. You shipped it consigned to St. Louis, to be delivered there?
A. Yes.
Q. And you never authorized or knew of anybody changing the destination of it, or the disposition of it?
342 A. No.

(Counsel for defendant objects to the evidence of the witness in relation to the bargain and sale, inasmuch as he has testified that it was made through correspondence, and that he has the correspondence in his possession and expects to produce it.)

The witness states that he will make diligent search for all telegrams and letters in regard to the sale of this barley, and if he finds them he will produce them to the notary, to be made a part of this, his evidence.

By Mr. HANSON: Mr. Cargill, what was the understanding between the W. W. Cargill Company and the Teichman Commission Company in respect to the ownership of this barley?
A. So far as I know, that we were the owners of the barley until it was accepted on the sale at St. Louis.
Q. That was the understanding acted upon afterwards by both parties, after the barley was burned, in replacing it with other barley?
A. It was.
Q. In what way?
A. By the shipment of the barley.
By Mr. WARREN: Mr. Cargill, you may state how the understanding which you have testified to was arrived at.
A. It was a plain business affair; it is purchase and sale. If you buy a load of coal at your house it is not your coal until it gets in the cellar.
Q. Was this understanding arrived at by correspondence or verbally?
A. I don't know as it was either.
Q. I will ask you if you did not state that this bargain and sale of this particular barley was made pursuant to correspondence which occurred between yourself and the consignee.
A. Yes, but you are asking how this determination was arrived at.

Mr. WARREN: I object to the witness' opinion; I want him to testify to the facts.

(The following correspondence is attached to and made a part of the evidence of Mr. W. W. Cargill, pursuant to the statement of the witness above made, that he would make diligent search for all letters and telegrams which passed between his company and the Teichman Commission Company in relation to the sale of above barley:)

OCT. 31, 1894.

Teichman Commission Company, St. Louis, Mo.

GENTLEMEN: We understand the fire at St. Louis, Sunday,
343 has burned a great many cars of barley and possibly some of them may be ours, and we would like to have you give us

the numbers of the cars that are burned and belonging to us, and we will reship the number of cars billed to you. Would be pleased, too, if you would make an effort to find the car numbers and give them to us as quick as possible, so we can duplicate the shipment and fill the sale. Please reply as early as possible.

Yours truly, W. W. CARGILL COMPANY.

SEPT. 27TH, 1894.

Teichman Commission Company, St. Louis, Mo.:

Will sell ten A barley October, shipment fifty-five half (55½) net

W. W. CRAGILL CO.

LA CROSSE, WIS., *September* 28, '94.

Teichman Commission Company, St. Louis, Mo.

GENTLEMEN: We have your message accepting our offer of 55½ for A barley, October shipment. We hereby confirm same.

Receipts of barley not large, and farmers seem to be busy plowing, and rather a disposition not to sell.

Yours truly, W. W. CARGILL COMPANY.

ST. LOUIS, MO., *Sept.* 28, 1894.

W. W. Cargill Company, La Crosse, Wis.

GENTLEMEN: Late last evening we wired you acceptance of your offer to sell 10,000 bushels your "A" barley Oct. shipment at 55½c. net here, shipment to be made via East Louis.

Our market is unchanged, with a very light demand for barley. We remain,

Yours truly, TEICHMAN COMMISSION CO.

Testimony of William McMichael.

Mr. WILLIAM MCMICHAEL, being first duly sworn, testified as follows:

Direct examination by Mr. HANSON:

Q. Mr. McMichael, you live in McGregor, Iowa?

A. Yes, sir.

Q. And are one of the petitioners named herein?

A. Yes, sir.

344 Q. On the 16th of October, 1894, did you ship from McGregor, Iowa, four cars of barley in St. Paul cars No. 37506, 12336, 2598, and 4146 consigned to the Teichman Commission Company, St. Louis?

A. Yes, sir.

Q. On the 19th of the same October, did you ship from McGregor two other cars of barley in St. Paul cars Nos. 3728 and 18126, consigned to the Teichman Commission Company, St. Louis?

A. Yes, sir.

Q. And on the 22d day of October, of the same year, from the same place, two other car-loads of barley in St. Paul cars No. 10720

and 6842, consigned to the Teichman Commission Company, St. Louis?

A. Yes, sir.

Q. Who was the owner of this barley?

A. T. McMichael & Son.

Q. Under what arrangement was it shipped to the Teichman Commission Company, at St. Louis?

A. Under a sale of 15,000 bushels of barley made October 15th.

Q. At what price and other terms?

A. Sold at 58c. net at St. Louis.

Q. Where delivered?

A. At St. Louis, Missouri, less inspection and weighing.

Q. Who paid the freight?

A. T. McMichael & Son prepaid it from McGregor, Iowa, through to St. Louis, Mo.

Q. This barley was destroyed by fire at East St. Louis, October 28, 1894; what, if anything, did T. McMichael & Son do in respect to the destruction of the barley?

A. The destruction of the barley caused us to buy other barley to fulfill our contract.

(Counsel for defendant objects to evidence in reference to what was done subsequent to the fire.)

Q. What did you do with it, did you ship it?

A. We had some cars already on the road, and shipped some fresh cars after notice of the burning of the barley to fill the contract made October 15th for the 15,000 bushels.

Q. Was that subsequent to the fire that you shipped a like quantity of barley as that burned to fill the contract which you made on the 15th of October?

A. Yes, sir.

Q. Who owned this barley at the time it was destroyed?

A. T. McMichael & Son.

345 Q. Who owned the barley which was shipped to take the place of that destroyed?

A. T. McMichael and Son.

Q. And why did you ship that other barley to take the place of that destroyed?

A. To fulfill a contract which we made October 15th.

Q. To deliver a certain quantity of barley to the Teichman Commission Company at St. Louis?

A. At 58 cents net.

Q. Is T. McMichael and Son the owner of the claim arising out of the loss of this barley?

A. Yes, sir.

Q. Any other person, firm or corporation have any interest in it?

A. No, sir.

Cross-examination by Mr. WARREN:

Q. Was this shipment made in pursuance to a bargain and sale, Mr. McMichael?

A. Yes, sir.

Q. You may state whether that bargain and sale was made verbally or by written instrument?

A. It was made by written correspondence.

Q. I will ask you if you have this correspondence in your possession, or copies of it?

A. I have not the correspondence in my possession.

Q. Do you know where it is?

A. I think it is in our office at McGregor—supposed to be there; that is where it should be.

Q. Will you produce the correspondence, and make it a part of your evidence?

A. I will if I can find it.

Q. Have you any correspondence now, here present?

A. In reference to the sale and purchase?

Q. Yes.

A. No, sir; I have no correspondence.

Q. Did you notify the railway company when you shipped this barley that it was yours and did not belong to the consignee?

A. We did not notify the railway company, no, sir; it is understood that all our shipments are ours.

Q. Is that the understanding between you and the consignee?

A. It is with ourselves; we have no right to have any understanding with any one; it is a matter of fact that it is our property.

Q. Do you know, of your own knowledge, whether or not this barley was ever delivered to the consignee?

346 A. It was not delivered to the consignee, as a matter of fact, because we have not received our pay for the same.

Q. Do you know, of your own knowledge, whether or not this barley was ever delivered to the consignee?

A. It was not delivered.

Q. How do you know that?

A. Because Teichman & Company asked us, I presume, to refill it.

Q. Then your testimony is based on what some one else has told you about it?

A. On what I see and know; the fact of the matter is they said we did not deliver it in St. Louis.

Q. They said so?

A. I guess the facts bear them out.

Q. Do you know, of your own knowledge, whether or not the consignee ever changed the destination of this barley?

A. He did not, to my knowledge.

Redirect examination:

Q. You know that after this barley was shipped the consignee notified you that you never delivered the full amount of barley you agreed to deliver?

A. Yes, sir.

Q. And they asked that you make such delivery?

A. Yes, sir.

Q. And you accordingly made delivery of the amount contracted for, subsequently?

A. Yes, sir.

(Counsel for defendant objects to evidence concerning what was done subsequent to the fire.)

Q. And you did that because you were reliably informed that it had been burned up at East St. Louis?

A. Yes, sir.

By consent of the attorney for the receiver the testimony of this witness is also taken in respect to three other cars of barley mentioned and described in the petition of T. McMichael and Son, and all objections as to the time of taking such testimony *is* waived.

This consent and waiver is made for the reason that it appears that in entering into the stipulation of August 27, 1895, by mistake the three cars of barley hereinafter testified to were omitted on said stipulation.

By Mr. HANSON: Mr. McMichael, on the 6th day of October, at McGregor, Iowa, did you deliver a car of barley in St. Paul
347 car No. 36088, and on the 22d of the same October, at the same place, two other car-loads of barley in St. Paul, cars Nos. 4268 and 7552, to the St. Paul Company, consigned to Teichman Commission Company, St. Louis?

A. Yes, sir.

Q. Under what arrangement was this barley shipped to St. Louis to the Teichman Commission Company?

A. It was shipped to apply on a sale.

Q. Were these three cars shipped by you under the same arrangement as the cars above stated?

A. Yes, sir.

Q. To apply on the same contract?

A. Yes, sir.

Q. So the arrangement for the shipment of these three cars of barley was precisely the same as the above eight cars of barley, and to apply on the same contract?

A. Yes, sir.

Q. And shipped under the same contract?

A. Yes, sir.

Q. What was done in reference to these three cars after they got to East St. Louis? State briefly.

(It is stipulated by and between the counsel for the respective parties that the cross-examination of this witness on the eight cars of barley will also apply to the last three cars mentioned, so far as that cross-examination applies to the arrangements for the sale of the same from T. McMichael and Son to the Teichman Commission Company.)

A. Upon their arrival at East St. Louis the barley was damaged by fire, and it was taken in charge by one Calvert, the agent of the receiver, and put in charge of Teichman and Company to sell on

account of the receiver as damaged barley, and the net proceeds of that sale amounted to $877.10; had the barley not been damaged it would have sold for $1,123.78, making a net loss on the barley to T. McMichael and Son of $226.68, in which amount T. McMichael and Son were damaged on account of said loss by fire, and this amount should be added to the amount stated in the stipulation of August 27th, to wit: $2,942.56, making a total of $3,169.24 as the amount of the damage to T. McMichael and Son sustained by the destruction of the barley by fire at East St. Louis.

(The following correspondence is attached to and made a part of the evidence of Mr. William McMichael in this matter, pursuant to his statement above made that he would produce what correspondence he could find in relation to the bargain and sale of the barley referred to in his testimony.)

348 McGREGOR, IOWA, *Oct.* 15, 1894.

Teichman Commission Company, St. Louis, Mo.

GENTLEMEN: Your message received this p. m., as follows: "Sold 15,000 sample last cars shipped, 58c. net; answer."

We replied, "Accept 58 cents net 15,000 bushels including the five cars to apply, gold prices higher."

We do not feel anxious to sell barley to arrive at these prices, and if any higher offers for new sample "A" wire for our acceptance.

Barley in our territory about all out of the farmers' hands. We mean new sample "A" same as five-car sample.

Yours very truly, T. McMICHAEL & SON.

Nov. 2, 1894.

Received at McGregor.
Dated St. Louis, Mo.

To T. McMichael & Son:

Will you replace the burnt barley at once to fill sale.

TEICHMAN COMMISSON COMPANY.

ST. LOUIS, MO., *Oct. 30th*, 1894.

Messrs. T. McMichael & Son, McGregor, Iowa.

GENTLEMEN: We are as yet unable to give you car numbers of barley destroyed by fire as written yesterday, but we are convinced that several of your cars were in the lot of burned and damaged barley.

We would now suggest that you give notice to your railroad at your end to push the Jacksonville Southern line here, to adjust loss sustained as speedily as possible.

Our barley market, as you will observe, is rather tame, and buyers manifest no desire to take hold.

Yours truly, TEICHMAN COMMISSION CO.

ST. LOUIS, MO., *Nov.* 2, 1894.

Messrs. T. McMichael & Son, McGregor, Iowa.

GENTLEMEN: We are in receipt of your telegram saying that you will replace your barley lost by the late fire.

We now have the assurance of the receiver of the J., S. & E. R. R. that they are amply able and anxious to settle the loss of barley by fire, as speedily as possible, which, however, may be delayed by the question arising if the barley is covered by their insurance
349 policy or by the one held by the Terminal Railway Company, which will soon be determined, as that company is co-operating with the J. & S. E. R. R. to effect an adjustment. We remain,

Yours truly,

TEICHMAN COMMISSION COMPANY.

P. S.—A strong feeling pervades the barley market, but buyers are holding back, being well supplied with barley for the present. Please advise us of your offerings and prices.

MCGREGOR, IOWA, *Nov.* 3, 1894.

Teichman Commission Co., St. Louis, Mo.

GENTLEMEN: We have made bill for cars 37506, 2598, 4126, 3728, 18126, 10720 and 6842, at fifty-eight cents net to us, less weighing $1 a car and inspection forty cents, total $2,942.56, and sent same to C., M. & St. P. R. R., and presume they will pay us as soon as they look it up.

We made the bill to the C., M. & St. P., because they collected the whole freight from us from McGregor to St. Louis, and we will hold them responsible if we can for the delivery in St. Louis of the property.

If you were advised by the railway company at your end to sell cars 36088, 4268 and 7552, which were damaged, please let us know whether we better accept the net proceeds of the three cars, and make bill for the loss or make bill for three cars at fifty-eight cents net to us, and you pay the railroad company the proceeds of the three damaged cars.

Yours very truly,

T. McMICHAEL & SON.

ST. LOUIS, MO., *Nov.* 5, 1894.

Messrs. T. McMichael & Son, McGregor, Iowa.

GENTLEMEN: We have your favor of the 3rd inst. and note contents. We also note shipment four cars "A" barley in place of same number of cars burned, which will be delivered on sale.

As we wrote you before, we refused to accept the three cars damaged barley, and you might include them in your claim against the railroad, but if you desire we will request the J. & S. E. line to sell these cars and turn over the net proceeds, so as to enable you to file claim for the difference. Please let us know your wishes in the matter.

Our barley market shows considerable improvement, although prices have not advanced materially.

At what shall we try to sell a round lot of your "A"?

Yours truly, TEICHMAN COMMISSION COMPANY.

350 McGREGOR, IOWA, *Nov.* 8, 1894.

Teichman Commission Co., St. Louis, Mo.

GENTLEMEN: We have considered the matter of the three cars damaged barley, and we think we better take the proceeds of the barley, and make a bill for the difference, as in this way we will not lose the interest on so large part of the money.

Please send us the account sale of the cars, 36088, 4268 and 7552, at your earliest convenience, and greatly oblige.

Yours very truly, T. McMICHAEL & SON.
N.

ST. LOUIS, MO., *Dec.* 1, 1894.

Messrs. T. McMichael & Son, McGregor, Iowa.

GENTLEMEN: We have your favor of the 29th ult., and noted contents.

Herewith we send you a/c sales of the three cars, your damaged barley, which we sold in accordance with instructions of Mr. W. H. Calvert, agent J. S. E. line, and although we have not yet received the money for same, we make returns to you today $897.10, so as to enable you to file your claim. The C., P. & St. L. R. R. (identical to J. S. E.) is anxious for you to hurry filing of claims for all barley; we understand car 5842 claim is still out. Barley entirely neglected today on a/c of unfavorable weather.

Yours truly, E. TEICHMAN, *Sec'y.*

For account of Messrs. T. McMichael & Son, by instructions Mr. W. H. Calvert.

Nov. 14, received from—

Car 14262, Ex.	4,268	barley	29,500	500 # S.
Car 45180, Ex.	7,552	barley	29,825	305 # S.
Car 1350, Ex.	36,088	barley	32,600	629 # S.
			91,925	48 $919 25

Charges.

Freight.	Inspection.		
	Storage.		
Bulking.	Insurance.		
Sack hire.	Weighing,	3.00	
Switching allowed.	$1.00 per car,	19.15	22 15
Commission 1c. bushel.	Net proceeds, E. & O. E.,		$897 10

East St. Louis, Dec. 1st, 1894.

TEICHMAN COMMISSION CO.

ST. LOUIS, *Oct.* 15, 1894.

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To T. McMichael & Son, McGregor, Iowa:

Sold fifteen thousand sample last shipments, fifty-eight, answer.

TEICHMAN COMMISSION CO.

Dated MCGREGOR, IOWA, *Oct.* 15, 1894.

Teichman Commission Company:

Accept fifty-eight net, fifteen thousand, including five cars to apply, hold higher.

T. McMICHAEL & SON.

ST. LOUIS, *Nov. 2nd*, 1894.

To T. McMichael & Son, McGregor, Iowa:

Will you replace the burnt barley at once, to fill sales?

TEICHMAN COMMISSION COMPANY.

Dated MCGREGOR, IOWA, *Nov. 2nd*, 1894.

Teichman Commission Company:

Yes; will load tomorrow.

T. McMICHAEL & SON.

Affidavit.

STATE OF WISCONSIN, } ss:
La Crosse County, }

I, M. C. M. Lightbody, a notary public in and for said county, hereby certify that in pursuance of the stipulation contained in the caption to the depositions hereto attached and herewith returned, made by the attorneys for the parties, the depositions of Messrs. James N. Gilchrist, Jacob Rau, J. H. Ellsworth, Henry Rippe, S. Y. Hyde, W. W. Cargill and William McMichael were taken before me at my office in the city and county of La Crosse, State of Wisconsin, on the 4th day of February, A. D. 1896, at 9 o'clock in the forenoon. That they were taken at the request of the within-named petitioners upon verbal interrogatories; that such depositions were taken in the suit of The Mercantile Trust Company of New York, complainant, against The Chicago, Peoria and St. Louis Railway Company, defendant, in the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau, James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist and Company, and Thomas McMichael and William McMichael, under the firm name of McMichael & Son, and Henry Rippe and Huntting Elevator Co., pending in the circuit court of the United States in and for the

352 southern district of Illinois; that Burton Hanson, Esq., for the petitioners, and Philip Barton Warren, Esq., for the receiver of said defendant, appeared before me at the taking of said depositions; that the reason for taking said depositions was that the said witnesses live at a greater distance than one hundred miles from the place of trial of said suit; that I am not now and never have

been of counsel or attorney to either of the parties to said suit, nor interested in the event of the cause; that said witnesses, before testifying, were duly sworn by me to testify the truth, the whole truth, and nothing but the truth, relative to said cause; that said testimony was reduced to writing by myself; that by stipulation, the reading over of said testimony to the witnesses and the signatures to the same were waived; that I have sealed up said depositions and directed the same to Mr. James F. Jones, clerk of the above-named court, at Springfield, Illinois.

In testimony whereof I have hereunto set my hand and affixed my official seal this 10th day of February, A. D. 1896.

[SEAL.] M. C. LIGHTBODY,
Notary Public, La Crosse County, Wisconsin.

Notary's fees, $25.68.

(Indorsed:) Filed February 15th, 1896. James T. Jones, clerk.

Stipulation of Parties, Letters and Telegrams to be Filed with Deposition of S. Y. Hyde.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY, Defendant.
} Consolidated Cause.

In the matter of the intervening petitions of the Carr, Ryder & Engler Company, Chicago, Milwaukee & St. Paul Railway Company, the S. Y. Hyde Elevator Company, the W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company, the Huntting Elevator Company, Thomas McMichael & William McMichael, under the firm name of McMichael & Son, and Henry Rippe.

It is hereby stipulated by and between the parties to the above-entitled proceedings that the copies of the letters and telegrams hereto attached may be filed with the deposition of Mr. S. Y.
353 Hyde, which was taken herein before M. C. Lightbody, a notary public, in and for the county of La Crosse and State of Wisconsin, on the 4th day of February, 1896, and attached thereto, and made a part of said S. Y. Hyde's deposition, and that when so filed and attached they may be used with the same force and effect as if the original of said letters and telegrams had been pro-

duced by said S. Y. Hyde at the time said deposition was so as aforesaid taken.

Dated March 4th, 1896.

BURTON HANSON &
GEORGE P. CARY,
Attorneys for said Petitioners.
BLUFORD WILSON &
P. B. WARREN,
Attorneys for the said Defendant, and
C. H. BOSWORTH,
Its Receiver.

(Indorsed:) Filed March 10, 1896. James T. Jones, clerk.

ST. LOUIS, MO., *Oct.* 1, 1894.

S. Y. Hyde Elevator Company, La Crosse, Wis.

GENTS: We have your favor of the 12th and note contents. We have your telegram saying "Make us net offer on 5,000 barley." We wired you "Fifty-five one-half net best possible." We have your answer just now saying "We accept five one-half 10,000 bu." However we can use only 5,000 bushels today, but shall try to sell 5,000 bushels more tomorrow or next day.

Ship as before to us here, via East St. Louis.

Yours truly, TEICHMAN COMMISSION CO.

LA CROSSE, WIS., *Oct.* 15, 1894.

To Teichman Commission Company:

Make us net offer on 5,000 barley.

S. Y. HYDE ELE. CO.

ST. LOUIS, MO., *Oct.* 15, 1894.

To S. Y. Hyde Ele. Co., La Crosse, Wis.:

Fifty-five one-half net best possible. Answer quick.

TEICHMAN COMMISSION CO.

ST. LOUIS, MO., *Oct.* 15, 1894.

To S. Y. Hyde Elevator Co., La Crosse, Wis.:

Ship 5,000 via East St. Louis; trying sell five more tomorrow.

TEICHMAN COMMISSION CO.

354 LA CROSSE, WIS., *Oct.* 15, 1894.

To Teichman Commission Co.:

We accept five half ten thousand; wire billing instructions.

S. Y. HYDE ELEVATOR CO.

ST. LOUIS, MO., *Sept.* 15, 1894.

To S. Y. Hyde Elevator Co., La Crosse, Wis.:

Ship 5,000 like sample to us here via East St. Louis.

TEICHMAN COMMISSION CO.

LA CROSSE, WIS., *Oct.* 17, 1894.

To Teichman Commission Co.:

Examine telegrams you will find we sold you ten barley fifteenth.

S. Y. HYDE ELEVATOR CO.

ST. LOUIS, MO., *Oct.* 17, 1896.

S. Y. Hyde Elevator Co., La Crosse, Wis.

GENTS: We have your telegram and regret to learn you are under a misapprehension of last sale of barley.

We enclose four telegrams which will explain the transaction, and also confirm sale of 5,000 bushels only of your barley.

We have endeavored to sell 5,000 bushels more, but have not succeeded so far, the market being dull and lower.

Yours truly, TEICHMAN COMMISSION CO.

LA CROSSE, WIS., *Oct.* 19, 1894.

Teichman Commission Co., St. Louis, Mo.

ST. LOUIS, MO.

GENTS: Yours containing copies of telegrams from St. Louis is received. We made no mistake. We asked you very plainly for an offer on 10,000 bushels barley; you answered 55½c. net. We accepted it for 10,000 bushels, but it seems the fault is with the telegraph company. We are now tracing the matter up and shall put in a bill against the telegraph company for $25—½c. per bushel on 5,000 bushels.

The telegram that you received reads plainly 5,000 bushels, but the telegram we sent reads plainly 10,000. We will retain all papers to put in with the claim.

Yours truly, S. Y. HYDE ELEVATOR CO.

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ST. LOUIS, MO., *Oct.* 19, 1894.

S. Y. Hyde Elevator Co., La Crosse, Wis.

GENTS: We have your favor of the 17th, from which we infer that the telegraph office at La Crosse must have made a mistake when wiring us, and no doubt you will find out that we are right in our assertion of having bought but 5,000 bushels.

The barley market is dull and lower and very little demand. Please keep us posted of your offerings of barley, stating lowest prices.

Yours truly,

TEICHMAN COMMISSION COMPANY.

ST. LOUIS, MO., *Oct.* 29, 1894.

S. Y. Hyde Elevator Co., La Crosse, Wis.

GENTS: We have your favor of the 28th and note contents.

Our barley market was fairly active and prices unchanged.

Last night a fire in the yards of the J. S. E. Railway Company in East St. Louis destroyed their freight warehouse, and a great many cars of barley on adjoining tracks. We think likely some of your

barley was amongst the cars destroyed, however, could not find out anything definite today. Will let you know soon as we find out.

We remain, yours truly,
TEICHMAN COMMISSION CO.

LA CROSSE, WIS., *Nov.* 7, 1894.

Teichman Commission Co., St. Louis, Mo.

GENTS: We have your letter regarding the fire at East St. Louis. Will you kindly inform us as soon as possible as to the number of cars we had lost.

Our barley is doing better in Chicago and Milwaukee in proportion than in St. Louis.

Yours truly,
S. Y. HYDE ELEVATOR CO.

LA CROSSE, WIS., *Nov.* 7, 1894.

Teichman Commission Co., St. Louis, Mo.

GENTS: We have your letter written to Mr. Murrell, of Wykoff, in which you say that you want him to ship another car in place of the barley that was burned. Do you want us to do the same with the barley of ours that was burned in the fire? Please answer, and we will do as you say about it; but we just as soon cancel the trade as any other way.

Yours truly,
S. Y. HYDE ELEVATOR CO.

356 ST. LOUIS, MO., *Nov. 9th*, 1894.

S. Y. Hyde Elevator Co., La Crosse, Wis.

GENTS: We have your favor of the 7th inst., and note contents. We thought you were aware that the destroyed barley is to be replaced, and would request you to ship same at your earliest convenience. As written before, better file claim at once for destroyed barley, including Murrell car; other shippers have already handed in their papers.

We have again investigated weights of those eighteen cars, but can't possibly find a mistake, as you will note from enclosed statement, to which the weigher will cheerfully testify before a notary. Today's market was active, and value steady.

Yours truly,
O. L. TEICHMAN.

LA CROSSE, WIS., *Nov.* 12, 1894.

Teichman Commission Co., St. Louis, Mo.

GENTS: We have your letter of the 9th. We *we* will try to load the barley today in place of the barley that was burned. We have written Wykoff to ship another car from there. Receipts have fallen off so they are next to nothing.

We are sold up on barley, and don't care to sell any more just at present.

Yours truly,
S. Y. HYDE ELEVATOR CO.

LA CROSSE, WIS., *Nov.* 9, 1894.

Teichman Commission Co., St. Louis, Mo.

GENTS: We have put in bill for the six cars of barley several days ago to our railroad company here, and it is now in the mill.

Yours truly, S. Y. HYDE ELEVATOR CO.

ST. LOUIS, MO., *Nov.* 12, 1894.

S. Y. Hyde Elevator Company, La Crosse, Wis.

GENTS: We have your favor of the 9th inst., and note contents. Please ship the barley to be replaced, including one "Murrell" car, at your earliest convenience.

Have you no offerings at all? Our barley market was quiet, but a firm undertone pervades same. Enclosing p. c. we are,

Yours truly, O. L. TEICHMAN.

ST. LOUIS, MO., *Nov.* 19, 1894.

S. Y. Hyde Elevator Co., La Crosse, Wis.

GENTS: We have yours of the 17th inst. and note shipment
357 of 5 cars #2 barley in place of cars destroyed; however, we find you shipped 40,000# more in the aggregate and we shall account for the excess at same price. Today's barley market was dull, as buyers are holding off.

Enclosing price current, we are,

Yours truly, O. L. TEICHMAN.

And I further certify that the above and foregoing was all the evidence in said cause, either before the court or the master.

WILLIAM J. ALLEN, *Judge.*

(Indorsed:) Filed June 1st, 1897. James T. Jones, clerk.

Petition of Receiver for Appeal, April 5, 1897.

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Petition for appeal.

The petition of C. H. Bosworth, receiver herein, showeth unto your honor that a final decree was entered in the above-entitled cause on the 5th day of April, 1897, whereby it was ordered, adjudged and decreed that your petitioner should pay to the said Jacob Rau the sum of $1,444.07; your petitioner further states to your honor that he has assigned errors upon the record in said cause, specifying errors, as he alleges, in the record and decree afore-

said. He therefore prays that your honor will grant an appeal from the said judgment and decree to your petitioner, upon condition that he enters into bond in the sum of five hundred dollars, with surety to be approved by this honorable court, in such time as your honor shall order and decree.

C. H. BOSWORTH, *Receiver*,
By BLUFORD WILSON,
PHILIP BARTON WARREN,
His Solicitors.

358 *Assignment of Errors by Receiver.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Assignment of errors.

And now comes C. H. Bosworth, receiver herein, by Bluford Wilson and P. B. Warren, his solicitors, and says there is manifest error in the record and proceedings in the above-entitled judgment and decree; and specifies the following, to wit:

1. The court erred in overruling the exceptions filed by the receiver to the report of the master.

2. The court erred in failing and refusing to sustain the exceptions filed by the receiver to the report of the master.

3. The court erred in ordering and adjudging that the petitioner was entitled to a valid and first lien on the property of the defendant railway company ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers, purchased at the foreclosure sale of said railway property.

4. The court erred in failing and refusing to order, adjudge and decree that the claim of the intervenor was not entitled to a valid and first lien on the property of the defendant railway company, ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers, purchased at the foreclosure sale of said railway property.

5. The court erred in ordering, adjudging and decreeing that said receiver pay to the intervening petitioner the sum of $1,444.07 with interest thereon from the date of the filing of the master's report, together with the costs in this case.

6. The court erred in ordering, adjudging and decreeing that if said amount was not paid by the receiver within the time there limited, the said receiver be directed to take possession of all of said property and operate the same, and out of the net earnings, pay said amount.

Whereby, the plaintiff in error prays that said judgment and decree be reversed and annulled, with directions to the lower court to dismiss said intervening petition.

BLUFORD WILSON,
PHILIP BARTON WARREN,
Solicitors for C. H. Bosworth, Receiver.

359 *Bond for Appeal by C. H. Bosworth, Receiver.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Bond.

Know all men by these presents, that we, C. H. Bosworth, as receiver of the Chicago, Peoria & St. Louis Railway Company as principal, and Bluford Wilson as surety, are held and firmly bound unto Jacob Rau, in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, the said receiver, as such, binds himself and his successor, and the said surety binds himself, his heirs and personal representatives, jointly and severally, by these presents.

Dated this 31st day of May, 1897.

The condition of this obligation is such that whereas, on the 5th day of April, 1897, in the circuit court of the United States, for the southern district of Illinois, in the above entitled cause, it was ordered, adjudged and decreed by the court that the above-bounden C. H. Bosworth, as receiver, should pay over to the said Jacob Rau the sum of $1,444.07, and from which decree the said receiver has appealed to the United States circuit court of appeals for the seventh circuit, and upon the condition that the receiver should enter into bond in the sum of five hundred dollars with surety to be approved by the court.

Now, therefore, if the said receiver shall well and truly, without delay, prosecute the said appeal with effect, and shall pay all costs and damages that may be adjudged against him, by reason of said appeal, and all costs that may accrue therein in case of dismissal of said appeal by appellant, then this obligation to be null and void, otherwise to remain in full force and effect.

C. H. BOSWORTH,
As Receiver of the Chicago, Peoria & St. Louis Railway Company. [SEAL.]
BLUFORD WILSON. [SEAL.]

Approved:
WILLIAM J. ALLEN,
United States District Judge.

360 *Order Allowing C. H. Bosworth, Receiver, an Appeal and Approving Bond.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Order allowing appeal and approving bond.

Now on this first day of June, 1897, the same being one of the days of the January term, A. D. 1897, of this court, comes C. H. Bosworth, receiver herein, and files his petition for appeal from the order and decree of the court entered herein on the 5th day of April, 1897; and it appearing to the court that said petition is in due form, it is hereby

Ordered, adjudged, and decreed that the prayer of said petition be, and the same is hereby granted; that the appeal be, and the same is hereby allowed to said C. H. Bosworth, receiver, from the said order and decree of April 5th, 1897, to the United States circuit court of appeals for the seventh circuit, upon the said C. H. Bosworth, as such receiver, entering into bond in the sum of five hundred dollars, with surety to be approved by this court; which bond it appears to the court is herewith submitted and approved.

Petition of the C., P. & St. L. R'y Co.

In the Circuit Court of the United States, Southern District of Illinois.

MERCANTILE TRUST COMPANY ET AL.
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Application of the Chicago, Peoria & St. Louis Railroad Company of Illinois to be made party defendant and for leave to appeal.

Now comes the Chicago, Peoria & St. Louis Railroad Company of Illinois, and shows to this honorable court that on the 10th
361 day of July, 1895, a decree was entered in the original foreclosure cause pending in this court, in which The Mercantile Trust Company *et al.* were complainants, and The Chicago, Peoria & St. Louis Railway Company *et al.* were defendants, for the foreclosure and sale of all the property of said defendant railway company; that in and by said decree it was provided, among other

things, that the purchasers of said property and their assigns might be made parties to all intervening petitions filed in such original cause, and might also appeal from any decree that might be entered in this court upon said intervening petitions; that on the 21st day of September, 1895, pursuant to said decree of foreclosure and sale, Stuart Brown, Esq., as master commissioner, sold said property to a reorganizing committee, and pursuant to a decree of this court entered herein on the 1st day of February, 1896, executed a deed to said property to the assignees of said reorganization committee, to wit: the Chicago, Peoria & St. Louis Railroad Company of Illinois; your petitioner further respectfully shows that in and by said decree of February 1, 1896, it was provided that the said Chicago, Peoria & St. Louis Railroad Company of Illinois, shall be substituted in place of said reorganization committee as a party to this cause, and shall have the right to appear herein and to procure and defend such proceedings as it may be advised for the protection of its interests; and shall have all the other rights and privileges to which, under said decree of foreclosure and the order confirming the sale thereunder, the purchaser at such sale is entitled.

Your petitioner further respectfully represents unto this court, that on the 5th day of April, 1897, a final decree was entered in the above-entitled cause, directing C. H. Bosworth, receiver, to pay to said intervening petitioner the sum of $1,444.07; and this petitioner further represents unto this court that it has assigned errors, which it charges were made by this court against it in the matter of said intervening petitions, particularly specifying the errors complained of, and now here presents said assignment of errors to be filed with the clerk of this court; and

Thereupon, this petitioner prays that it may be made a party to said intervening petition, and that this court will grant to it an appeal from said final decree; and that the amount of bond and the time within which such bond and certificate of evidence shall be filed may be fixed by this court.

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY OF ILLINOIS,
By BLUFORD WILSON, *Its Solicitor.*

362 *Assignment of Errors by the C., P. & St. L. R'y Co.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Assignment of errors.

And now comes the Chicago, Peoria and St. Louis Railroad Company of Illinois, by Bluford Wilson and P. B. Warren, its solicitors

and says there is manifest error in the record and proceedings in the above-entitled judgment and decree; and specifies the following, to wit:

1. The court erred in overruling the exceptions filed by the receiver to the report of the master.

2. The court erred in failing and refusing to sustain the exceptions filed by the receiver to the report of the master.

3. The court erred in ordering and adjudging that the petitioner was entitled to a valid and first lien on the property of the defendant railway company ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers purchased at the foreclosure sale of said railway property.

4. The court erred in failing and refusing to order, adjudge and decree, that the claim of the *inventor* was not entitled to a valid and first lien on the property of the defendant railway company ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers, purchased at the foreclosure sale of said railway property.

5. The court erred in ordering, adjudging and decreeing that said receiver pay to the intervening petitioner the sum of $1,444.07, with interest thereon from the date of the filing of the master's report, together with the costs in this case.

6. The court erred in ordering, adjudging and decreeing that if said amount was not paid by the receiver, within the time there limited, the said receiver be directed to take possession of all of said property and operate the same, and out of the net earnings pay said amount.

Where*by*, the plaintiff in error prays that said judgment and decree be reversed and annulled, with directions to the lower court to dismiss said intervening petition.

BLUFORD WILSON,
PHILIP BARTON WARREN,
Solicitors for Chicago, Peoria and St. Louis Railroad Company of Illinois.

363 *Bond on Appeal of the C., P. & St. L. R'y Co.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY. } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Bond.

Know all men by these presents, that we, the Chicago, Peoria & St. Louis Railroad Company of Illinois, as principal, and Bluford Wilson as surety are held and firmly bound unto the said Jacob Rau in the penal sum of five hundred dollars, for the payment of

which, well and truly to be made, the said Chicago, Peoria & St. Louis Railroad Company of Illinois as such binds itself and its successor, and the said surety binds himself, his heirs, and personal representatives, jointly and severally by these presents.

Dated this 17th day of July, 1897.

The condition of this obligation is such that whereas, on the 5th day of April, 1897, in the circuit court of the United States for the southern district of Illinois, in the above-entitled cause, it was ordered, adjudged and decreed by the court that the above-bounden Chicago, Peoria & St. Louis Railroad Company of Illinois should pay over to the said Jacob Rau the sum of $1,444.07, and from which decree the said Chicago, Peoria & St. Louis Railroad Company of Illinois, has appealed to the United States circuit court of appeals for the seventh circuit, and upon the condition that the Chicago, Peoria & St. Louis Railroad Company of Illinois should enter into bond in the sum of five hundred dollars, with surety approved by the court.

Now therefore, if the said Chicago, Peoria & St. Louis Railroad Company of Illinois shall well and truly, without delay, prosecute the said appeal with effect, and shall pay all costs and damages that may be adjudged against it by reason of said appeal, and all costs that may accrue therein in case of dismissal of said appeal by appellant, then this obligation to be null and void, otherwise to remain in full force and effect.

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY OF ILLINOIS,
By F. W. HUIDEKOPER, *Pres't.* [SEAL.]
BLUFORD WILSON. [SEAL.]

Attest: CHAS. D. MEYER, *Secretary.* [SEAL.]

Approved:
WILLIAM J. ALLEN,
United States District Judge.

364 *Order Making C., P. & St. L. R'y Co. Party Defendant, Allowing Appeal, and Approving Bond.*

In the Circuit Court of the United States, Southern District of Illinois.

MERCANTILE TRUST COMPANY ET AL. *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } Consolidated Cause.

In the matter of the intervening petition of Jacob Rau.

Order of court making the Chicago, Peoria & St. Louis Railroad Company of Illinois party defendant and granting leave to appeal from final decree.

This cause coming on to be further heard upon the application of the Chicago, Peoria & St. Louis Railroad Company of Illinois to

be made a party defendant to the above-entitled intervening petition, and for leave to appeal from the decree entered in this cause on the 5th day of April, 1897, and the court being fully advised in the premises, upon consideration thereof, does hereby grant leave unto said Chicago, Peoria & St. Louis Railroad Company of Illinois to be made party defendant to said intervening petition; and does also hereby grant unto said Chicago, Peoria & St. Louis Railroad Company of Illinois an appeal from said final decree of this court to the circuit court of appeals of the United States for the seventh circuit, upon the said Chicago, Peoria & St. Louis Railroad Company of Illinois entering into bond in the sum of five hundred dollars ($500.00) with approved surety.

Certificate of Clerk.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United States, in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of the papers filed and proceedings thereon had, in the matter of the intervening petition of Jacob Rau, filed in a certain cause, wherein The Mercantile Trust Company of New York is complainant, and The Chicago, Peoria & St. Louis Railway Company is defendant, as truly and completely as the same appear of file and record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this 10th [SEAL.] day of September, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence, the one hundred and twenty-second year.

JAMES T. JONES, *Clerk.*

365 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the fifth day of October, 1896, of the October term, in the year of our Lord one thousand eight hundred and ninety-six and of our Independence the one hundred*th* and twenty-first year.

366 And afterwards, to wit: on the twentieth day of August, 1897, in the October term last aforesaid, there was filed in the clerk's office of said court a copy of an order of the circuit court of the United States for the southern district of Illinois, which said order was in the words and figures following, to wit:

Copy of Order. Filed Aug. 20, 1897.

In the Circuit Court of the United States for the Southern District of Illinois.

SATURDAY, *June* 26, 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petitions of the Chicago, Milwaukee & St. Paul Railway Company, Carr, Ryder & Engler Company, S. Y. Hyde Elevator Company, W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company; Huntting Elevator Company, McMichael & Son, and Henry Rippe.

On motion of the receiver in this cause by his solicitor, it is ordered by the court that the time of the receiver to file the record in the matters of said intervening petitions to the United States circuit court of appeals for the seventh circuit be extended thirty (30) days.

A true copy.

[SEAL.] JAMES T. JONES, *Clerk.*

367 And afterwards, on the same day, to wit: on the twentieth day of August, 1897, in the October term last aforesaid, there was filed in the clerk's office of said court a copy of a further order of the United States circuit court for the southern district of Illinois, which said order was in the words and figures following, to wit:

Copy of Order. Filed Aug. 20, 1897.

In the Circuit Court of the United States for the Southern District of Illinois.

WEDNESDAY, *July* 21, 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petitions of the Chicago, Milwaukee & St. Paul Railway Company, Carr, Ryder & Engler Company, S. Y. Hyde Elevator Company, W. W. Cargill Company, Jacob Rau; James N. Gilchrist and Colin F. Bell, partners under the firm name of Gilchrist & Company, Hu-tting Elevator Company, McMichael & Son, and Henry Rippe.

This cause coming on to be further heard upon the application of the receiver and the Chicago, Peoria & St. Louis Railroad Company

of Illinois, for an extension of time to file records in the United States circuit court of appeals for the seventh circuit, and the court being duly advised in the premises, upon consideration thereof, does hereby order that the time to file said records be extended till the 30th day of August, A. D. 1897.

A true copy.
[SEAL.]

JAMES T. JONES, *Clerk.*

368 And afterwards, to wit: on the fourteenth day of September, 1897, in the October term last aforesaid, came the appellee, by his counsel, Mr. Burton Hanson and Mr. George P. Cary, and filed their appearance in the clerk's office of said court, which said appearance was in the words and figures following, to wit:

Appearance. Filed Sept. 14, 1897.

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1896.

C. H. BOSWORTH, Receiver, Appellant,
vs.
JACOB RAU, Intervenor. } No. 452.

The clerk will enter my appearance as counsel for the intervenor.

BURTON HANSON.
GEORGE P. CARY.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals, for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Sept. 14, 1897. Oliver T. Morton, clerk.

369 And afterwards, to wit: on the fifteenth day of September, 1897, in the October term last aforesaid, came the appellant, by his counsel, Mr. Bluford Wilson, and filed in the clerk's office of said court his appearance, which said appearance was in the words and figures following, to wit:

Appearance. Filed Sept. 15, 1897.

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1896.

C. H. BOSWORTH, Receiver, Appellant,
vs.
JACOB RAU, Intervenor. } No. 452.

The clerk will enter my appearance as counsel for the appellant.

BLUFORD WILSON.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals. Individual and not firm names must be signed.

Endorsed: Filed Sept. 15, 1897. Oliver T. Morton, clerk.

370 And afterwards, on the same day, to wit: on the fifteenth day of September, 1897, in the October term last aforesaid, came the appellant, by his counsel, Mr. P. B. Warren, and filed in the clerk's office of said court his appearance, which said appearance was in the words and figures following, to wit:

Appearance. Filed Sept. 15, 1897.

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1896.

C. H. BOSWORTH, Receiver, Appellant,
vs.
JACOB RAU, Intervenor. } No. 452.

The clerk will enter my appearance as counsel for the appellant.
P. B. WARREN.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals, for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Sept. 15, 1897. Oliver T. Morton, clerk.

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the fourth day of October, 1897, of the October term, in the year of our Lord one thousand eight hundred and ninety-seven and of our Independence the one hundred and twenty-second year.

371 And afterwards to wit: on the fourth day of October, 1897, in the October term last aforesaid, in the record of proceedings thereof in said entitled cause, appears the following entry, to wit:

Order of Oct. 4, 1897.

MONDAY, *October* 4, 1897.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

C. H. BOSWORTH, Receiver, Appellant,
vs.
JACOB RAU, Intervenor. } 452.

Appeal from the circuit court of the United States for the southern district of Illinois.

It is ordered by this court that this cause be, and the same is hereby placed on the calendar for this session of this court. And it is further ordered that this cause may be argued with cause

No. 442. C. H. Bosworth, receiver, etc., *vs.* Chicago, Milwaukee & St. Paul Railway Company, intervenor.

372 And afterwards, on the same day to wit: on the fourth day of October, 1897, in the October term last aforesaid, the following further proceeding were had and entered of record, to wit:

Order of Oct. 4, 1897.

MONDAY, *October* 4, 1897.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

C. H. BOSWORTH, Receiver, Appellant,
vs.
JACOB RAU, Intervenor. } 452.

Appeal from the circuit court of the United States for the southern district of Illinois.

It is now here ordered that this cause be, and the same is hereby set down for hearing Monday, October 25, 1897.

373 And afterwards, to wit: on the twenty-fifth day of October, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Hearing, Oct. 25, 1897.

MONDAY, *October* 25, 1897.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL. } 452.

In the matter of the intervening petition of Jacob Rau, intervenor.

Appeal from the circuit court of the United States for the southern district of Illinois.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed records and briefs of counsel and on oral argument by Mr. Bluford Wilson, counsel for appellant, and by Mr. Burton Hanson, counsel for appellee; and the court having heard the same takes this matter under advisement.

374 And afterwards, to wit: on the twenty-fifth day of February, 1898, in the October term last aforesaid, there was filed in the clerk's office of said court, the opinion of the court, which said opinion was in the words and figures following, to wit:

Opinion. Filed Feb. 25, 1898.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1897.

C. H. BOSWORTH, Receiver, ET AL.
vs.
THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company, Jacob Rau, The Huntting Elevator Company, and Carr, Ryder and Engler Company, Intervenors in the Case of Mercantile Trust Company *versus* Chicago, Peoria and St. Louis Railway Company *et al.* } Nos. 442, 452, 453, and 454.

Appeals from the circuit court of the United States for the southern district of Illinois.

Before Woods, Jenkins, and Showalter, circuit judges.

These appeals are from decrees against the appellant, C. H. Bosworth, as receiver of the Chicago, Peoria and St. Louis Railway Company in favor of interveners in the case of Mercantile Trust Company *vs.* Chicago, Peoria and St. Louis Railway Company, wherein the receiver was appointed, for damages caused by the burning of freight cars and their contents, of which the appellant is alleged to have had possession as a common carrier, on the evening of October 28, 1894, at East St. Louis. By an amendment the petitions were made to charge that while the cars were still in the possession of the receiver at East St. Louis he negligently caused and permitted them to be placed in proximity to a
375 wooden warehouse filled with baled and loose hay which was exposed to fire from passing locomotives and in some manner caught fire which, communicating to the cars, caused the damage complained of. The amounts decreed to be paid to the interveners, respectively, were: To the Chicago, Milwaukee and St. Paul Railway Company, $9,033.73; to Jacob Rau, $1,144.07; to the Huntting Elevator Company, $2,600.95; to the Carr, Ryder and Engler Company, $777.26, and to others, not parties here, whose decrees it has been agreed shall abide the result of these appeals, various sums aggregating near $10,000. The facts in the main were agreed upon and the controlling question is whether the cars and goods at the time of destruction were in the possession of the receiver, or had passed into the possession of the Terminal Railroad Association of St. Louis, which owned the tracks upon which the cars were standing when they were consumed.

It appears that not having adequate yard facilities of its own at East St. Louis, the Chicago, Peoria and Saint Louis Railway Company on August first, 1892, entered into an agreement with the Terminal Railroad Association for the use of its tracks, and either by acquiescence or by formal stipulation that agreement remained in

force between the Terminal Association and the receiver. Only the first, fourth and fifth clauses need be quoted:

"It is agreed that the party of the first part (the Terminal Railroad Association) shall furnish the necessary yard room and track facilities in their yards in East St. Louis, Illinois, as now located, and the necessary switch-engines and yardmen to do the switching of the party of the second part, in the making up and breaking up of all freight trains that depart from, and arrive at East St. Louis, and to furnish storage room for a reasonable number of cars necessary to properly take care of and handle the business of the party of the second part, not exceeding one hundred and fifty (150) cars at any one time; and the charge for the facilities and the work above named, shall be at the rate of fifty (50) cents per loaded car in and out, except cars on which the party of the first part receives a bridge toll, which will be handled free; empty cars in and out free.

Fourth. All cars consigned to and from the East St. Louis freight-house of the party of the second part, to be switched to and from the Wiggins transfer tracks without extra charge. Regular switching charges and rules to apply on all other cars to and from connections, the party of the first part to be governed in making its collections by instructions shown on billing to it as to who
376 should pay. In the absence of any instructions the switching charges will follow the car.

Fifth. The party of the first part to furnish track room upon which the engines of the party of the second part can be switched and cared for and turned, as may be required; the care of such engines to be under the supervision of the party of the first part; the price for the service rendered to be agreed upon by the master mechanic of the party of the first part and the superintendent of motive power and machinery of the party of the second part."

"These tracks of deposit," says the master's report, "were not exclusively used by the C., P. & St. L. but the cars seem to have been always placed upon them." It is apparent from the evidence, however, that the receiver had no voice in determining where a car should be placed, or with what care it should be guarded.

For the purpose of saving the labor and expense of making proof the parties stipulated that the property described in the several petitions was destroyed as stated; that the Carr, Ryder and Engler Company, a corporation, on October 20, 1894, delivered the property described in its petition to the Chicago, Milwaukee and St. Paul Railway Company at Dubuque, Iowa, loaded in car number 1004 of the Rock Island and Peoria Railway Company, and consigned for transportation as per bill of lading to the May & Thomas Hardware Company, Birmingham, Alabama, by way of East St. Louis, Illinois; that the Chicago, Milwaukee and St. Paul Railway Company was the owner of the thirty-eight cars described in its petition; that during the evening of October 28, 1894, those cars while on the tracks of the Terminal Railroad Association of St. Louis, commonly used by the receiver under the agreement between that association and the Chicago, Peoria and St. Louis Railway Company, dated August 1, 1892, were damaged by fire to the total amount of

$9,033.73; that the cars were consigned as per bills of lading and waybills introduced in evidence; that Jacob Rau of Wykoff, Minnesota, at the times and places alleged in his petition delivered to the Chicago, Milwaukee and St. Paul Railway Company two carloads of barley, consigned to the Orthwein Grain Company, St. Louis, Missouri, by way of East St. Louis, Illinois; that receipts in the form of exhibits attached to the stipulation were given by the railway company at the time the barley was received for transportation, and that when destroyed the barley belonged to the petitioner and was of the value of $1,144.07. The stipulation in respect to the shipment of the Huntting Elevator Company is in the same words, except that the consignee named is the Teichman Commission Company, and the value of the goods destroyed is stated
377 to have been $2,650.95. Like stipulations were made concerning the cases of other interveners from whose decrees there has been no formal appeal. The agreement was afterwards amended by striking out the clause in respect to the ownership of the barley shipped by the several petitioners except Rau and one other whose consignments were for sale on commission.

It is contended by the appellant that the destination of the cars consumed except five, as shown by the waybills and receipts or copies thereof introduced in evidence by the interveners, was East St. Louis, although in the column under the head of "Marks and consignees" the name of the consignee and the words "St. Louis, Missouri," appear.

The shipments of barley, except those for sale on commission, were made in pursuance of telegraphic correspondence showing offers of net prices by the brokers or commission men at St. Louis accepted by the shippers, and it is contended by the appellant that on delivery of the grain to the carrier the title passed to the consignees and that the interveners have no right of action. On the other hand, proof was offered to show that delivery at St. Louis was intended by the parties, and that on that understanding other shipments were made after the fire in lieu of those destroyed.

At the time of the fire the cars destroyed, together with others which were injured and afterwards repaired, had been on the tracks of the Terminal Association for various periods of time, one since the 28th day of September preceding, and of those received in October there arrived on the 10th one, and on the 16th one, on the 24th four, on the 25th eighteen, on the 26th twelve, on the 27th at 7.55 a. m. nine, at 6.44 p. m. two, and on the 28th at 6.55 a. m. four, at 1.45 p. m. one, and at 2.57 p. m. car 1004. Of the aggregate number, fifty-four, all but eight were cars of the Chicago, Milwaukee & St. Paul Railway Company.

In respect to the manner in which the cars brought in over the receiver's road were handled and disposed of by the employés of the receiver and of the Terminal Association under their agreement, it appears that after an incoming train had been broken up and the cars placed on the tracks of the Terminal Company they remained there in the physical control of that company until the consignee, to whom the receiver was accustomed to send prompt

notice of the arrival of a car consigned to him, should indicate the particular destination, which might be on the east or west side of the river or a point on the line of another railroad, whereupon the receiver would make out and deliver to the Terminal Company a new waybill on which that company would transfer the car
378 as directed. It appears further that on the delivery of such a new waybill, and not sooner, it was the custom of the receiver if the car belonged to another company to send notice to that company that the car had been delivered to the Terminal Association, it being the custom of railroad companies in that way to keep each other advised of the disposition and whereabouts of their respective cars.

It satisfactorily appears further that it was the custom of brokers and buyers at St. Louis to leave in the cars until sold certain classes of goods, and particularly consignments of barley received upon the tracks of the Terminal Railroad Association, whether billed to St. Louis or East St. Louis, the mode of selling goods so held being by samples taken on the arrival of cars by agents of the consignees employed to visit daily the yards for that purpose. It further appears that the receiver at the hearing before the master made a statement of facts which he proposed to prove by some of the consignees of the barley in question, and asked time to produce the witnesses, and that in order to avoid delay it was agreed by the interveners that if produced, the witnesses would testify, as stated by counsel for the receiver, to the effect following:

"That the Terminal Railroad Association personally solicited this particular barley business, originating on the Chicago, Milwaukee and St. Paul railroad, upon which this controversy is pending; that these solicitations by the Terminal Railroad Association were made to all barley dealers in St. Louis to whom the particular consignments of barley were made which are now in litigation; that the Terminal Railroad Association as an inducement to barley dealers and shippers, agreed to hold the cars on their tracks at East St. Louis and offered other facilities in and about their yards at East St. Louis, by which the St. Louis Terminal Railroad Association succeeded in securing the business of all the shippers, by that term I mean the consignees and shippers, except the business of the John Wall Commission Company, whose business was being handled by the Wiggins Ferry Company, a competing line with the St. Louis Terminal Railroad Association, and that at a later day they also secured the business of this last-named firm. And that this solicitation was made in the interest of the Terminal Railroad Association for the express purpose of having the business sent down the east side of the Mississippi river so as to give them the benefit of the transportation across the river at East St. Louis to St. Louis, in competition with lines west of the Mississippi river."

In a general report of the master touching all the cases it is
379 said "that no notice was sent to the owner, shipper or consignee of the arrival of said cars at St. Louis, or of the delivery of them to the Terminal railroad," and in the special report upon the case of Jacob Rau it is said concerning his cars that "no

notice of their arrival was given to owner." It is not reported that the consignee of any car was not notified by the receiver and did not otherwise have knowledge before the fire that the car had arrived and was upon the Terminal tracks, subject to his order. On the contrary, the proof is that the consignees received from the shippers immediate notice by mail of each consignment and, in addition, received a sample of the grain which, according to the report, the shippers were accustomed to send by express. Informed in this way of the number and contents of a car in transit the agent of the consignee in regular and daily attendance in the yards for that purpose was able to take and, there being no evidence to the contrary, presumably did take, the required sample from each car promptly upon arrival. This conclusion is fortified by a letter of the Orthwein Grape Company to one of the interveners in which it is said: "Two of your cars (giving the numbers) arrived this afternoon," and by the testimony of Rau to the effect that his consignee had possession of samples of his grain taken from the cars on the day of their arrival at East St. Louis. The proof, in addition to the facts stated, being that notice of the arrival of cars was regularly and promptly sent to the consignees by the employés of the receiver, the fair inference in the absence of contrary evidence is that notices of the arrival of the cars in question were sent and were duly received by the consignees.

WOODS, circuit judge, after making the foregoing statement:

If the facts were simply that under the agreement of 1892 and in accordance with the custom which had grown up cars from the receiver's road were taken by the Terminal Association and placed upon its tracks and permitted to remain there until the receiver, at the request of the consignee, should make out and deliver to the Terminal Association new waybills showing a particular destination, it would perhaps be true as contended in behalf of the interveners that the responsibility of the receiver for the cars with their contents which were destroyed had not ceased, because the waybills under which they could have been transferred had not been made out. But besides the fact of the custom the undisputed evidence is that shipments of barley originating on the Chicago, Milwaukee & St. Paul railroad, including the consignments in dispute, were made to or by way of East St. Louis in order that the cars should come into the possession of that association for trans-
380 fer in pursuance of an understanding amounting to an agreement between the association and the consignees that the association should hold the cars on its tracks and afford other facilities about its yards at East St. Louis until the consignee should determine and give notice to what point a transfer should be made. That agreement was equivalent to a specific direction by the consignee upon the receipt of each car by the Terminal Association that the car should be held for further orders; and in that situation, whatever otherwise might have been his duty, the receiver was under no obligation to notify the consignee of the arrival of a car, and it is not material whether such notice was given or not. The

delivery to the Terminal Association was complete, and no delay in making out new waybills or in sending junction notices to the owners of the cars, if owned by other companies, could be of force to show a continued legal or constructive possession by the receiver. The consignees, whether buyers of the grain or agents of the shippers, it is well settled, had authority in the absence of notice to the contrary to direct what disposition should be made of the cars on their arrival at East St. Louis, and the legal result is the same as if the Terminal Company's possession and detention of the cars had been with the consent or by direction of the interveners themselves.

In view of the custom which prevailed and of the agreement between the Terminal Association and the consignees of barley at St. Louis, the liability of the receiver as carrier ceased once the cars had been placed upon the Terminal tracks. From that time the question was not whether the placing of the cars upon its tracks by the Terminal Association operated to transfer the liability of a carrier from the receiver to the Terminal Association, but was whether the liability of a bailee for hire, or as warehouseman, was on the receiver or on the Terminal Association. It is doubtless true in a general sense that the shipper of goods or the owner of goods shipped is entitled to the common-law liability of the carrier until the goods shall have reached their destination, but that right, it must be clear, does not exist when the line of transportation is not to be continuous, as when to the knowledge and with the consent of the shipper there must be on the way a place and period of storage; and when the right exists it is one which the shipper or his agent, the consignee, may waive, and in this case it was waived by the consignees when they agreed and directed that the cars and contents should be held on the Terminal tracks to await their specific orders for transfer. If the original destination was St. Louis and was so in-

381 tended by the shippers, no notice of any restriction upon the authority of the consignees to change the destination was given, and when by their direction the course of transit was broken or suspended the liability of the carrier ceased, and under the facts, as they appear, the liability of bailee commenced, on the part either of the receiver or of the Terminal Association, and the question is, on which? It does not solve this question to say that the action of the Terminal Association, under its contract with the receiver to break up trains and to remove the cars to certain tracks, did not constitute a delivery. Under that contract and under the custom which had prevailed, if the proof went no further, it is conceded that the Terminal Association would have been under obligation to obey the orders of the receiver with respect to the cars, but when in addition to that contract and the custom it is shown that the Terminal Association was under a separate agreement with the consignees, to which the receiver was not a party, and of which it does not appear that he had knowledge, to hold on its tracks all cars consigned to them until they should give notice of the desired transfer, a radically different case is shown. Under that agreement it was not material, nor was it contemplated, that the Terminal Association should know of the final destination of any car or of its

contents until the time for transfer should come. The purpose of the agreement was to leave the destination undetermined until the last. No liability as common carrier could attach to the Terminal Association until a forward movement or transfer of the car should be ordered, and there being, as already explained, no question of liability as a carrier the question of formal delivery, as affecting the existence of such liability or its transfer from one company to the other, was in no sense involved. Whether the receiver, either in ignorance of the agreement of the association with the consignees, or for other reason growing out of the custom of business between the two companies, supposed himself to be in some sense responsible for the consignments in question is not material. Neither is it important, if true, that the Terminal Association undertook to furnish terminal or yard facilities which it was the duty of the receiver's company to provide. If otherwise there would have been such a duty on the receiver he was relieved of the duty in respect to these cars by force of the agreement between the consignees and the Terminal Association. To a consignee who has provided a place for the receipt and storage of his goods a carrier is certainly under no obligation to afford like facilities; and if by reason of an independent contract the carrier has a right to make delivery or to store
382 goods in the same place provided by the consignee the carrier does not on that account remain responsible to that consignee for the safety of his goods after depositing them in that place. These consignees having bargained with the Terminal Association to hold their cars upon its tracks, the tracks became theirs for that purpose, just as much as otherwise they would have been the tracks of the receiver under his agreement with the Terminal Association, and the cars having been placed upon those tracks the receiver's possession and responsibility ceased, as they would have ceased if the cars had been placed on private tracks of the consignees; and whether waybills had been handed over or remained in the possession of the receiver could be of no possible significance.

The principle of law underlying these propositions, if they are not to be regarded as elementary, are well established and familiar, and are quite in harmony with the opinion in Mount Vernon Company *v.* Alabama Great Southern Railroad Co., 92 Ala., 296, and other cases to which reference has been made. See also Pratt *v.* Railway Co., 95 U. S., 43. While it is conceded that ordinarily there must be a continuous liability as common carrier upon somebody until the goods have arrived at their destination, manifestly the rule does not apply when, as here, the shipper, through his agent the consignee, has consented to an interruption of the course of transit and to the holding of the goods meanwhile by a bailee of his own selection. The supposed difficulty with the proposition that the Terminal Association was still in possession, because it did not know that these cars were for St. Louis, nor to whom they were consigned, nor whether they might not be intended for the Wiggins Ferry Company, and in the usual course of business could not know until waybills had been delivered to it, is not substantial. There is no evidence that the association did not in fact know that the cars were

for consignees in St. Louis for whom it had agreed to hold cars. The evidence shows that sometimes the agents of the association at the instance of consignees called for cars for which no waybills had been requested of the receiver by the consignees. If the information had been deemed important it was easy to obtain it from the consignees and their agents, and doubtless from the agents of the receiver, without waiting for the time of transfer when customarily waybills were called for and delivered. The information, however, was not in fact important, because until the particular destination of a car had been determined by the consignee the responsibility of the association as bailee was only for ordinary care and could not be greater or less whether the name of the consignee
383 or the destination of the car were known or unknown. Indeed, the association under its contract with the receiver was under the same liability to the receiver, if the receiver remained liable to the owner, and on no possible supposition or theory is it perceived that its liability could be affected by its knowing or not knowing whether particular cars came within the scope of its agreement with the consignees at St. Louis. Besides, it was not a part of the agreement that the Terminal Association would hold for the consignees cars received upon its tracks which it knew to be or when it knew them to be so consigned. Such a limitation upon the scope of the agreement is not even suggested by the evidence, would be in itself unreasonable, and presumably was not in the mind of either party. Even under the agreement with the receiver the actual possession and physical control of the cars passed immediately upon arrival to the Terminal Association, and if consigned to parties for whom the association had agreed to hold them there is no reason suggested for continued liability of the receiver, in any character, except the lack of the mere formality of making out and delivering to the Terminal Association a waybill, which in the course of business could not be made out until the consignee in his own pleasure should give the necessary direction; and if that had been done the Terminal Association would have become liable as a carrier to make an immediate transfer to the place or in the direction of ultimate destination. In other words, on the theory that the Terminal Association's liability to the consignees or shippers could arise only upon receipt in the usual course of waybills from the receiver, it could never have become liable as bailee under its agreement with the consignees to hold the cars for them, and could have incurred liability only as a carrier to make transfers as ordered. It is evident, moreover, that the receiver was not bound to make out new waybills, and might have avoided this formal objection to his discharge from liability, if he had known of the agreement of the Terminal Association with the consignees, by delivering or tendering the original waybills on the arrival of the cars, or at a later time, to the Terminal Association; but that again would have been only a formality, without substantial effect upon the relations or rights of the parties, and therefore was not necessary. It is perhaps true, that if the responsibility of the receiver had not ceased, the owners, whether consignees or shippers, would have had their election to sue the

receiver for a breach of contract as bailee, or the Terminal Association for negligently causing the injury; but having themselves entered into an understanding with the Terminal Association, whereby it was to hold the goods for them, they necessarily waived any right to look further to the responsibility of the receiver, and upon the destruction of their property, through the fault of the Terminal Association in exposing it to what the master has characterized as a veritable fire-trap, they had upon the facts disclose, and presumably have yet, a clear right of action against that association upon its contract with them, and in such an action, if brought, the association could hardly be heard to say that no liability had arisen under that contract because it had not received waybills or did not know to whom the cars had been consigned.

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If it appeared that the receiver had knowledge of the agreement between the Terminal Association and the consignees the plain, if not necessary, inference would be that it was merely for the convenience of the parties that the receiver did not give the original waybills or copies to the Terminal Association upon the arrival of cars but waited until the consignee had determined the final destination and then made out new waybills; and, if it be assumed that the receiver was ignorant of that agreement, it is no less clear that the Terminal Association and the consignees, solely for their own convenience, continued according to the custom not to call upon the receiver for waybills until by the determination of the consignees the cars were to be forwarded, and the legal consequence should be and is the same as if the receiver had possessed full knowledge of the situation; or, if there be a difference, it is in the receiver's favor. The principle involved is well illustrated, upon a converse state of facts, in the case of The St. Louis, etc., Railway *v.* Commercial Ins. Co., 139 U. S., 223. There the owners of cotton destroyed by fire and the railroad company which was sued were, as here, in separate contract relations with the Union Compress Company, which, like the Terminal Association here, held the goods as bailee either for the owner or for the railroad company. Pursuant to a custom which had grown up for the convenience of all parties the railway company had been in the habit of giving to the owners of cotton in exchange for the receipts of the compress company through bills of lading before the cotton had been loaded upon the cars and had been accustomed to give the compress company notice of the fact of loading with direction in each instance to ship the cotton on the railroad by a route and to an address named, but in this case no bill of lading had been given and before loading the cotton was burned. The railroad company was charged with a negligent failure, though often requested by the compress company, to furnish transportation according to its contract with that company, and one of the questions in the case was how far the railway company's liability in the action was affected by the fact that it had issued bills of lading for other cotton which formed a part of the accumulated mass which was burned in the street, no waybill hav-

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ing been given for the 340 bales for the destruction of which the suit was brought. "This cotton certainly," says the opinion, "was in the exclusive possession and control of the compress company. The railway company had not assumed the liability of a common carrier or even of a warehouseman with regard to it; had given no bills of lading for it; had no custody or control of it, and no possession of it, actual or constructive; and had no hand in placing or keeping it where it was." And speaking directly in respect to the effect of the issuing of bills of lading upon the company's liability for cotton covered thereby, the court said: "There is nothing else in the case which has any tendency to show that the railway company had or exercised any control or custody of the cotton, or of the place where it was kept by the compress company before it was put upon the cars by that company. * * * The evidence warranted, if it did not require, the inference that the bills of lading were issued merely for the convenience of all parties, and with no intention of making any change in the actual or legal custody of the cotton until it was so loaded. California Ins. Co. *v.* Union Compress Co., 133 U. S., 387–415. Upon the facts of this case it may well be doubted whether the liability of the railway company as a common carrier began before the cotton had been received upon its cars and had thereby come into its actual and exclusive possession and control." In California Insurance Co. *v.* Union Compress Co. referred to above, in respect to a similar issue of bills of lading, it is said: "At most, the railroad companies, by acquiring the receipts of the plaintiff and issuing bills of lading for the cotton took only constructive possession of it; and the plaintiff, retaining actual and physical possession of it, did not lose any element of possession necessary to give it the right to effect insurance for its own benefit." So here upon the facts stated the non-delivery of waybills by the receiver to the Terminal Association in any view can constitute evidence only of constructive possession, and, since in that respect a waybill is less significant than a bill of lading, should not, in view of the agreement between the consignees and the Terminal Association, be deemed to be controlling or even persuasive evidence of continued possession, even constructive, on the part of the receiver, and of consequent responsibility for the safe keeping of the cars.

386 Two things are necessary to the beginning of liability as a carrier, namely, delivery—that is to say a transfer of the physical possession of the goods—and shipping directions; while to the initiation of liability merely as a bailee for hire notice of ulterior destination is unimportant and only possession of the goods is essential. And it is on this distinction that upon a delivery thereof into the possession of the Terminal Association the liability of the receiver ceased and that association, if any one, became responsible for such cars and contents as were covered by its agreement with the consignees, whether it had or had not received notice of the ultimate destination of particular cars.

It is conceded that a railroad company is responsible for the cars of another company in use upon its road under the same rule of liability as for the goods carried therein, and it follows that, not

being responsible in these cases for the contents of the cars of the Chicago, Milwaukee & St. Paul Railway Company, the receiver is not responsible for the loss of the cars themselves.

The agreements and the custom under which cars were transferred at East St. Louis of course had no application to the case of the Carr, Rider & Engler Company, and the decree in favor of that company was right. No cessation in the course of carriage was contemplated, and by the rule that the liability of one carrier in a continuous transit does not cease until the liability of the connecting carrier begins, the receiver must be held responsible for the loss of the goods of that company. Though in physical possession, under its agreement with the receiver of the car in which the goods were being transported, the Terminal Association had not become responsible as a carrier therefor because it had not been put in possession of a waybill or other form of information on which it could proceed with the carriage. In respect to that car, no interruption in the course of transit having been contemplated or authorized either by the shippers or by the consignees, it may be said that the receiver, as one of the connecting carriers, was under the double duty—it would perhaps be proper to say as agent for the shipper—to deliver possession and to communicate shipping directions to the next carrier, and that duty in one aspect not having been performed his liability as carrier had not ceased.

JENKINS, *Circuit Judge:*

I concur that the appellant should be held liable for the destruction of the property contained in car numbered 1004 and this because he had not divested himself of his liability as insurer
387 by delivery of car and its contents to the next succeeding carrier. The owner or shipper of goods to be carried over connecting lines of railway is entitled to the protection afforded by the common law liability of a carrier until the goods have arrived at their destination and a reasonable time has elapsed after their arrival to accept delivery of them; and with respect to connecting lines each carrier assumes the responsibility of an insurer while the goods are in transit over its particular line and until delivery to the next succeeding carrier. Railroad Company *v.* Manufacturing Company, 16 Wall., 318; Pennsylvania Railroad Company *v.* Jones, 155 U. S., 333, 339.

What shall constitute a delivery which relieves the one carrier from and imposes upon the succeeding carrier the burden of an insurer of the property in transit has been the subject of some contention in the courts. The result of the discussion has been, as I think, to establish a rule that is at all times protective to the shipper or owner and imposes the burden of insurer upon the carrier with whom it should be properly lodged. No better expression of the rule can be found than that declared by the supreme court of Alabama, Clopton, J., delivering the opinion, in Mount Vernon Co. *v.* Ala. Gt. Southern Railroad Co., 92 Ala., 296, 298: "The duties and obligations of the common carrier do not commence until there has been a complete delivery of the goods—until they are placed

in his custody and under his exclusive control for immediate transportation. Though the goods may be delivered, if transportation is to await shipping orders or directions, or some act to be done by the consignor before they are forwarded; or, if they cannot be at once put *in transitu* because of the failure of the shipper to give shipping orders or directions, the carrier is liable only as bailee until such orders and directions are given, or until he is informed to what place the goods are to be forwarded, and to whom delivered. The strict responsibility of a common carrier arises concurrently with the duty of immediate transportation; and this duty does not arise so long as anything remains to be done by the consignor before the goods can be intelligently started on the route to their destination—Barnes *v.* Eldridge, 100 Mass., 455; O'Neill *v.* N. Y., Cin. & H. R. R. Company, 60 N. Y., 138; Hutchinson on Carriers § 3282–'88. The same rule is applicable in the case of connecting carriers. The responsibility peculiar to the common carrier is not devolved on the next connecting carrier until the receiving carrier has delivered the goods to the former with directions for their shipment—the
388 place of destination and to whom consigned. Until this is done the relation of common carrier is not established between the shipper and the connecting carrier."

The facts in that case are quite similar to those in the cases under consideration. The East Alabama Railway Company received certain cotton and issued a bill of lading for through transportation from Gadsden, Alabama, to Mount Vernon switch, Maryland, over its own and connecting roads. The receiving carrier transported the cotton from Gadsden to Attalla, at which place the lines of the two companies connected; and the car containing the cotton was placed upon a side track of defendant, the East Alabama Railway Company having no side track at that point. No notice was given defendant's agent at Attalla that the cotton was placed on a side track for through shipment, nor was there any name or address of the consignee, nor any waybill or shipping directions sent with the cotton, or to the agent of defendant, until after the cotton was burned, which occurred during the night of the third day after its arrival at Attalla. It was held that there had been no delivery and that the liability of insurer had not been assumed by the defendant company. See also Reynolds *v.* Boston & Albany Railroad Company, 121 Mass., 291; McDonald *v.* The Western Railroad Corporation, 34 N. Y., 597; Condon *v.* Marquette, Houghton & Ontonagon Railroad Company, 55 Mich., 218; Conkey *v.* The Milwaukee & St. Paul Railway Company, 31 Wis., 619. The result of this rule is that before a delivery can be deemed completed the succeeding carrier must be invested by the preceding carrier with the possession and exclusive control of the property and that for immediate transportation. The liability of the succeeding carrier commences only when that of the preceding carrier has terminated. A delivery is not consummated by merely placing the car upon the tracks of the succeeding carrier, for such carrier is not by that act informed of the destination of the car and cannot therefore give it immediate transportation. The delivery of a bill of lading or way-

bill without delivery of possession would confer, at most, only a right to ultimate possession, California Insurance Company *v.* Union Compress Company, 133 U. S., 387–415, and would not impose upon the succeeding carrier the liability of an insurer until delivery of actual and exclusive possession and control. St. Louis, Iron Mountain & Southern Railway Company *v.* Knight, 122 U. S., 79, 93; St. Louis, Iron Mountain & Southern Railway Company *v.* Commercial Union Insurance Company, 139 U. S., 223; Missouri Pacific Railway *v.* McFadden, 154 U. S., 155, 160. So, also, the mere physical possession without shipping directions would not impose
389 such liability (although the company might be liable for the goods as bailee) because the goods must be delivered into the carrier's exclusive possession and control for immediate transportation and the duty of immediate transportation could not arise until the delivery of proper shipping directions. There must concur the possession and exclusive control and the necessary directions essential to immediate transportation before the character of insurer can attach to the connecting carrier. Until these conditions have been performed by the delivering carrier he is not absolved from liability as insurer. In the cases before us it appears that the appellant was without yard facilities or switching engines at the end of his line at East St. Louis. Under contract with the Terminal Association the latter undertook for a consideration stated to furnish him with yard facilities and with switch-engines to break up his incoming trains and to place his cars upon certain designated tracks belonging to the Terminal Association, there to await further directions with respect to their destination. The Terminal Association had no means of knowing the destination of the cars until such further directions were given. This was accomplished by means of the delivery of the waybills stating the name of the consignee and the place of destination. In doing this work of switching and placing the cars the Terminal Association acted as the agent of and for and in behalf of the receiver. While the cars so stood upon the designated tracks they were in the possession of and under the control of the receiver and not of the Terminal Association. A completed delivery could only be made, according to the usual course of business between the two lines, by the delivery of a waybill indicating the destination of the goods, the amount of advance charges and the name of the consignee, and taking receipts for them; then, and not until then, was the Terminal Association invested with the possession and exclusive control of these goods; then, and not until then, was the duty of immediate transportation imposed. This was the uniform course of business between the connecting carriers concerning which there is no disputation in the evidence; fortified by the fact that the receiver's company, accustomed to make daily reports to other companies of delivery of their cars to connecting carriers, did not report such cars as delivered until waybills had been given to the Terminal Association and its receipts taken for the cars. The initial placing of the cars by the Terminal Association upon its tracks under its contract with the receiver's company was merely the act of an agent performing for the principal a duty de-

volving upon him and which he was unable to perform except
390 in that way. It was the act of the receiver by his agent and was not a delivery of the car for transportation to a succeeding carrier.

As I read the case of Pratt *v.* The Grand Trunk Railway Company, 95 U. S., 43, the facts being considered, it is in full accord with the position here assumed. Without doubt the custom of business established between two connecting carriers may largely control in the application of the rule, since such custom may determine the agreement of the carriers with respect to acts which shall constitute a delivery. In that case, as not here, the goods were placed within the exclusive control of the succeeding carrier. There the presence of the goods in the precise locality agreed upon for the deposit of goods for transportation over the lines of the succeeding carrier with the address of the consignees upon them sufficiently indicated that they were for transportation over its line of railway; not so here, for the cars were placed upon tracks set apart for the accommodation of the receiver and the Terminal Association was without knowledge of consignee or destination of the cars, or whether they were to be transported over its line at all. There the goods were deposited by the one party and received by the other for transportation; not so here, because the car was placed by the Terminal Association under its contract for the accommodation of the receiver and, without further direction, it was not possible for the Terminal Association to know whether the car was for transportation at all over its lines, or whether it should be transferred to the Wiggins Ferry Company. There, by the custom of business, it was the duty of the succeeding carrier with respect to goods deposited in the particular place for transportation to call upon the preceding carrier for waybills; not so here, for the duty of delivering a waybill was cast upon the receiver. There the liability as insurer was denied because the goods had been delivered to the succeeding carrier for proper carriage.

I am of opinion that the like rule should be applied with respect to the car-loads of barley consigned to parties in the city of St. Louis, unless the liability of insurer had been interrupted by some act of the consignor or consignee. It will be observed that the transit of the barley was not ended upon the arrival of the cars at the end of the receiver's line of road at East St. Louis. It was still to be transported over other and connecting lines to its destination. The barley was still *in transitu*. The record discloses that it was the custom of the receiver with respect to goods consigned to the city of St. Louis upon their arrival at East St. Louis to give immediate notice to consignees and take their directions to
what part of the city of St. Louis the goods should be for-
391 warded and by what line, whether by the lines of the Terminal Association or by the lines of the Wiggins Ferry Company, two rival companies whose lines of railway connected with the road of the receiver. The master's report in the principal case states "that no notice was sent to the owner, shipper or consignee of the arrival of said cars at St. Louis, or of the delivery of them to

the Terminal railroad." The appellant has cast upon him the burden of showing that he has fulfilled his contract of carriage; that upon the arrival of goods, according to the custom of business, he had notified the consignees and taken their directions with reference to the further carriage of the goods. It is not shown that this notice was given and the master reports that it was not. This phase of the case, however, need not be dwelt upon for, assuming that notice had been given and no instructions received within a reasonable time, the liability of the receiver as a common carrier was discharged, but liability as warehouseman was assumed. The goods were still in his custody and under his control. They had not been delivered to the Terminal Association for further carriage or for any other purpose. The cars were placed upon the tracks designated as the yard tracks of the receiver and were there for his accommodation. The Terminal Association had no control over them. It was not advised of the destination of those cars, or of the consignees. Until such advice it could not rightfully take possession of them, nor rightfully transport them, nor safely deliver them. They might be for transportation over the Wiggins Ferry Company, its rival, and the Terminal Association was bound by its contract with the receiver to furnish switch-engines for the transportation of those cars and their delivery to the Wiggins Ferry Company when so ordered. If in the case supposed the receiver held them merely as warehouseman, he is still liable, for his answer asserts that the cars were placed in close proximity to a "veritable fire-trap;" so that, whether the receiver is to be regarded with respect to his obligation as insurer or as warehouseman of these goods and these cars, he is liable for their destruction.

It is held by the presiding judge that by reason of a certain supposed agreement between consignees in St. Louis and the Terminal Association—to the effect that the latter, as an inducement to barley dealers to ship over its lines, would hold cars containing shipments to such consignees on the tracks of the Terminal Association at East St. Louis—the receiver was absolved, and liability under such agreement imposed upon the Terminal Association so soon as these cars had under the contract with the receiver been placed
392 upon the tracks designated for the accommodation of the receiver's cars. I am unable to concur in this conclusion. I have sought to show that there had been no delivery of these cars to the Terminal Association. It had not knowledge of their destination. It had not knowledge of the consignees of them. They were subject to the direction and control of the receiver. The Terminal Association under its contract with the receiver had placed these cars upon these tracks for the receiver and for a compensation agreed upon. It therein was the agent of the receiver. It could not know whether these cars were to be transported over its line or the lines of the Wiggins Ferry Company; it could not know in what direction they were to be transported or their ultimate destination. When it had placed the cars on these tracks pursuant to its contract with the receiver it had nothing further to do with them until the receiver had dispossessed himself of possession and

control and had invested the Terminal Association therewith. I cannot comprehend that the general agreement between the Terminal Association and consignees can become operative with respect to the contents of these cars until delivery to the Terminal Association and it had been invested with the exclusive possession and the exclusive control of them. The force of the reasoning is not perceived whereby it is held that because in fact these goods were ultimately to go to persons who had contracted with the Terminal Association—of which contract the receiver had no knowledge—therefore these goods were held under that contract before delivery in fact to the Terminal Association and before it was invested with exclusive control of them. I do not undertake to say that the Terminal Association may not be liable to the receiver for its negligent acts causing the fire whereby this property was destroyed. Neither the question nor the party is before us. The question here is whether the receiver is absolved from liability; whether, failing a delivery of the cars to the Terminal Association, failing a surrender by the receiver of control over them, with ignorance upon the part of the Terminal Association of their destination or their consignees, the agreement between the Terminal Association and the consignee had become operative with respect to these goods. I think not. If the receiver had directed that the Terminal Association under its contract with him should transfer these goods to the Wiggins Ferry Company, his order must have received recognition and have been carried out by the Terminal Association; and it cannot be doubted that up to the time of the fire in question the goods were so subject to the receiver's direction and control. For these reasons I think that the decrees appealed from should be affirmed.

393 SHOWALTER, *Circuit Judge:*

The failure of appellant touching any obligation on his part to give proper shipping directions to the connecting carrier is not set up as a ground of action in any one of the petitions. The cause of action alleged in each is that he was a common carrier and that the property therein specified, which was negligently or accidentally destroyed by fire, was at the time of such destruction still in his possession as bailee for carriage. Counsel for appellees say:

"The pleadings raise a single issue: Were the cars and their contents, at the time they were destroyed, in the possession of appellant as receiver of the Chicago, Peoria and St. Louis Railroad Company, or had they been delivered by him to the next succeeding carrier, the Terminal Railroad Association of St. Louis? Appellees claim that the cars and their contents had not been delivered to the Terminal Railroad Association at the time of the fire, but were in the possession of appellant, while appellant contends that he had made a delivery of them, and, therefore, is not responsible for the loss and damage which the fire caused. The sole question for decision, therefore, is, had there been a delivery of the cars and their contents by appellant to the Terminal Railroad Association at the time of the fire?"

Referring to all the cars in question other than the one mentioned next below in this opinion, they say further:

"These cars and their contents having been consigned to St. Louis, a point beyond the end of the receiver's route, the duty of the receiver was, when he received them into his possession at Peoria, to carry them safely to East St. Louis, the end of his road, and there deliver them to the Terminal Association, the next succeeding carrier. The obligation to safely deliver these cars and their contents to the Terminal Association was just as imperative as the obligation to carry them safely, and until he made such a delivery, he held this property as a carrier."

On October 20, 1894, the Carr, Rider & Engler Company, a corporation of Dubuque, Ia., delivered to the Chicago, Milwaukee & St. Paul Railway Company, a quantity of doors, sashes and blinds loaded in a car numbered 1004 which belonged to the Rock Island & Peoria Railway Company. This freight was consigned by
394 way of East St. Louis to May & Thomas Hardware Company, Birmingham, Ala. The Chicago, Milwaukee & St. Paul Railway Company hauled this car to Rock Island, Ill., and there delivered it to the Rock Island & Peoria Railway Company. This latter company hauled the car to Peoria and there delivered it to the Peoria and Pekin Union Railway Company. By this latter company the car was taken to Pekin, Ill., and there delivered to this appellant receiver, operating the road of the Chicago, Peoria & St. Louis Railway Company, who hauled the same to a point immediately beyond the terminus of his own rails at East St. Louis and on the rails of the Terminal Railroad Association of St. Louis, reaching that point about three o'clock on the afternoon of October 28, 1894. Servants of the Terminal Railroad Association of St. Louis, in the usual course of their employment by that company then hauled the car to a certain customary halting place on the premises of their employer, using for the purpose an engine which belonged to their employer. Here they left said car stationary till the evening of that day when it was destroyed by fire. In the usual course of business the Terminal Association, after obtaining from the receiver a waybill or memorandum indicating the ultimate destination of said car, would have hauled the same over its own rails in East St. Louis, or over rails subject to its control for that purpose, and delivered the same to a carrier on whose line the transit south was to continue.

When the initial carrier, the Chicago, Milwaukee & St. Paul Railway Company, received this car it gave a receipt to the shipper containing certain terms and conditions expressly applicable to the transit over its own line. Each intermediate and connecting carrier took the car not by virtue of any express contract with the shipper or consignee, but of its legal obligation as a carrier to accept and carry and safely deliver at the end of its line to the next succeeding carrier. The appellant here is not liable for the loss of the car by any express contract with the shipper or consignee. From the standpoint of the shipper or consignee of car 1004 the Terminal Association was a connecting carrier to haul the car from the ter-

minus of appellant's rails to the point in or near East St. Louis whence the next succeeding carrier would take it south. Appellant was bound for the safety of the car until it went into the care of the Terminal Association. Appellant was also required to indicate to the Terminal Association the destination and, possibly, the route selected south from East St. Louis. This information would be given by means of a memorandum called a waybill. The strong contention by appellees is that because no waybill was ten-
395 dered by appellant to the Terminal Association before the destruction of the car, appellant must be deemed in possession at the time of the loss; in other words, that the Terminal Association could not be treated as in possession until it had received the waybill.

The Terminal Association, as said, in fact took and at the time of the loss had the custody and care of the property. So far as appears the haul over its tracks from the point where appellant's servants parted from the car to the point where the loss occurred was a portion of the transit to be made in any case, no matter what the ultimate destination of the car might be. For the purpose of moving the car thus far the information as to the ultimate destination which a waybill would have given was not needed. It does not appear that the lack of such information contributed in any way to the loss. It does appear that in the peculiar carrying business conducted by the Terminal Association, the car in question would remain for a time stationary and thereafter be hauled, probably with other cars grouped for the purpose, to the starting place of the carrier who was to take it south. Information as to the ultimate destination and route had not, as yet, been actually imparted by appellant to the Terminal Association. But the latter was content for the time being to treat such information then in the possession of appellant as sufficiently available to itself.

The theory that appellant remained constructively bailee for carriage, it is fair to say, is urged in connection with a document showing certain contract relations between appellant and the Terminal Association. The first, fourth and fifth sections of that document have been quoted in the opinion of the presiding circuit judge. The preamble is in words following:

"Whereas, the party of the first part undertakes to give the party of the second part terminal facilities at East St. Louis, Illinois, for the handling of its trains, care of its engines and cars, and the handling and care of its freight, under the following terms and conditions," etc.

The second and third sections and the last paragraph, being the remainder of the contract in question, are quoted below:

"Second. Cars made 'bad order' by and during the making up and breaking up of trains of the party of the second part to be repaired by the party of the second part, and the party of the second part shall furnish its own car inspectors.

"All cars made 'bad order' outside of the yards set aside for the use of the party of the second part shall be repaired by the party causing the damage.

"Third. For all loads to and from the National stock
396 yards, the party of the second part is to pay the party of the first part one (1) dollar per car in and out, inclusive of the charge for making up and breaking up of trains, but not the trackage charge at National stock yards.

"This contract to be in force from and after the 1st day of August, 1892, and to continue for six months from that date, and to be renewed from time to time, as desired, at the expiration thereof, if satisfactory to both parties."

No yards, nor any special place or territory in any yards were "set aside" by the Terminal Association "for the use of" the receiver in the sense that he exercised any dominion over, or had any possessory right to the same. The servants of the Terminal Association may have been accustomed to haul cars from the receiver's road to some special territory in the yards of the Terminal Association and that territory may for the time being have been "the yards set aside for the use of" the receiver within the sense of the second section of the contract. But said servants did not do this by any direction from the receiver; nor was any right in him to direct or control them, or to designate the place on the grounds or rails of the Terminal Association where any car received from his road should be at any given time, in any way recognized. This was the construction given to the contract and acted on by the parties. The document in question is not a conveyance. I do not find in it any transfer of any estate in its grounds or tracks, or any part thereof, or of any possessory interest in its engines, orcontrol over its servants, from the Terminal Association to the receiver. That the receiver had no such interest or estate is more obvious here than that in Pratt *v.* Railway Company cited below, the Grand Trunk Railway Company had no proprietorship of any kind over any part of the station-house of the Michigan Central Railway Company. The fifth paragraph of the contract apparently licenses the receiver to enter the premises of the Terminal Association to look after such of his engines as may be there for the time being. But the receiver had no possessory estate of any sort in any part of the property of the Terminal Association.

A shipper who sends freight over a given line of road, whether operated by a single carrier or by independent and connecting carriers, has the right to needful terminal facilities for unloading his goods. In paying the freight charge he pays for such facilities if in his case they are needed. But what carrier provides them is from his standpoint an immaterial matter. If the goods are carried to the neighborhood of the place of destination by one carrier and the terminal facilities made use of there to haul the goods
397 from the terminus of such carrier's rails to the place of destination or to a new starting place for further transit, are provided by another, the freight charge to the shipper will be the same for the two as if both the road of the first carrier and the property, rails, fixtures and equipment of the second belonged to a single carrier. Assuming that the rails of this receiver terminated at a point in East St. Louis, but that at this point they connected with

the rails of the Terminal Association, and that the latter company owned or possessed terminal facilities and a system of what may be called intramural roads by which it hauled cars to points in St. Louis and to the termini in and about St. Louis or East St. Louis of the roads of various other carriers leading from these cities in different directions, and that the Terminal Association was in the business of receiving and hauling freight over its line to other lines and to various points of ultimate destination in the neighborhood—then the Terminal Association would be a connecting carrier and would be subject to all rules of law governing that business. The case of Walker *v.* Keenan, 34 U. S. App., 691, concerned the matter of terminal facilities. Counsel for the defeated party in that case made application to the Supreme Court of the United States for a writ of certiorari. The sole matter of controversy was the true meaning and significance of the Covington Stock Yards case here called to our attention by appellees' counsel and referred to below in this opinion. The certiorari was denied. 164 U. S., 706.

A contract between this appellant and the Terminal Association regulating the charges which the Terminal Association might receive for the business done by it on its own road is nothing more than a division of the freight charge between the two connecting carriers. As said above the shipper pays no more than if the appellant had himself owned and operated the lines of the Terminal Association. Such a contract could not interfere with or modify the legal obligation of either carrier to a shipper whose goods are handled successively by both. Neither appellant nor the Terminal Association could evade or alter any legal obligation to a third party by any contract between themselves. If the Terminal Association had alienated to appellant an actual ownership or possessory right over that portion of its tracks where the cars in controversy were destroyed, and such a control over its employés and engines that said employés when engaged in handling the cars in question were the servants of appellant and the engine used by them his engine for the time being, the case would be different. On this hypothesis the tracks where the cars were destroyed would have been appellant's tracks, the employés who hauled the
398 cars to that point his servants, the engines used by them his engines, he would have continued to be the bailee of the property, and the matter of waybills or junction reports would have signified nothing. But in my judgment, as said, the contract in question had no force as of alienation by the Terminal Association to appellant of any possessory right, interest or estate in or over any property of the former company, or of any control over its servants. Neither the relation of lessor and lessee, nor that of licensor and licensee, existed between these parties as resulting from said contract so far as it concerned the cars and contents in question.

In the Covington Stock Yards case, 139 U. S., 128, it was ruled, in effect, that a carrier bringing cattle to a consignee who had provided himself with structures connecting his yards with the railroad track whereby cattle might be unloaded directly from the cars into his yards, could not refuse to unload the cattle of such consignee

into the yards and by means of the appliances provided by him for the mere purpose of compelling him to pay a terminal fee at the cattle yards provided by the company, or provided by an independent corporation. This case, as I conceive, has not here the application and significance suggested by counsel for appellees. Of the cars in question one was to go to Birmingham, Alabama, the others, loaded with barley, to different points in and about St. Louis as directed by the consignees. Appellant did not engage to furnish unloading facilities for these cars. He was under no obligation to these appellees to provide terminal facilities for unloading. He handled the cars and freight as an entirety.

So far as concerns any one of the cars here in question, when the Terminal Association took possession the appellant as a carrier or bailee no longer had any control. No one of these cars would again come into his custody unless the owner of such car, or of the property therein contained, should see fit to reship the same back over his road. Appellant had brought the cars in controversy safely to the end of his line and the Terminal Association had hauled them over its tracks to the place of loss. Appellant had ceased to be bailee of these cars, or any of them, and the Terminal Association had become such bailee. The Terminal Association had voluntarily accepted all these cars from appellant knowing them to be, at the time of such acceptance, in transit. They were upon the tracks of that company and would be moved thereafter by that company, by its servants using its engines and over its tracks or over tracks under its control for that purpose. It matters not that the information upon which the latter company would act in the further
399 transit of car 1004 was still to come from appellant, or that the information touching the different points in St. Louis where the cars of barley were wanted by the consignees, might also come through appellant.

Ultimate shipping directions as between appellant and the Terminal Association were regulated by an understood course of dealing between them. Such a car, for instance, as 1004 would, in any case and by reason of the peculiar character of the carrying business conducted by the Terminal Association, remain for a time stationary on its premises. It mattered not whether the ultimate shipping directions were contemporaneous with the delivery, or some hours later. Following the custom which had prevailed between the two carriers, appellant had not, at the time of the loss sent the ultimate shipping directions. But for the destruction of this car appellant would have given the shipping directions within ample time to suit the convenience of the Terminal Association in moving the car on to the starting place of the next succeeding carrier. Such shipping directions as appellant was able to give concerning any of these cars, were at all times available to the Terminal Association. Concerning some of the cars consigned to parties in St. Louis the evidence seems to show, that, by arrangement between the consignees and the Terminal Association, the place on the premises of the company where the loss occurred might be or might become the place of final destination.

As between an intermediate and a connecting carrier that one, I take it, which was in fact bailee of the goods when the loss occurred is answerable to the owner. He is not required to work out theories of constructive possession, or of constructive non-delivery resting on some understanding or mode of dealing between the two which he might have difficulty in finding out or proving. But the method or course of dealing whereby an intermediate carrier conveys shipping directions to a connecting carrier is a different matter. It is due to the owner that such directions be given so that his goods may go on and without needless delay. If this requirement be answered I do not see how the owner is concerned with the method or custom of dealing on that matter which the two carriers find convenient.

As between the owner or shipper and the initial carrier goods are not in transit until the destination has been made known so that the transit may commence. But when goods are once in transit then, barring exceptional circumstances not necessary to the discussion, they remain in transit until the final destination is reached, and some one carrier in the line of connecting carriers is always subject to the obligations of a bailee for carriage. A con-
400 necting carrier may receive and load into his own cars goods which he knows are to be carried by him, and thereafter take from the preceding carrier the shipping directions. He may even carry such goods to a specified point on his own road to which he knows they must be carried in any event and there receive the shipping directions. If he be content with such a course of dealing between himself and the previous carrier on the matter of shipping directions, I do not see why he did not become bailee for carriage when he received the goods, why the delivery by the preceding carrier was not then complete, or how the owner could sustain any hurt from such method of dealing between the two carriers?

In Pratt *v.* The Grand Trunk Railway Company, 95 U. S., 43, the goods had been shipped from Liverpool to St. Louis. The packages were marked "P. & F., St. Louis." The goods were carried by the defendant from Montreal to Detroit and there they were destroyed by fire. On a state of facts as quoted in full below, delivery to the connecting carrier was predicated and the defendant held clear of liability:

"At the time the fire occurred, the defendant had no freight room or depot at Detroit, except a single apartment in the freight depot of the Michigan Central Railroad Company. Said depot was a building several hundred feet in length, and some three or four hundred feet in width, and was all under one roof. It was divided into sections or apartments, without any partition wall between them. There was a railway track in the center of the building, upon which cars were run into the building to be loaded with freight. The only use which defendant had of said section was for the deposit of all goods and property which came over its road, or was delivered for shipment over it. This section, in common with the rest of the building, was under the control and supervision of the Michigan Central Railroad Company, as hereinafter mentioned. The defendant employed in this section two men, who checked freight which

came into it. All freight which came into the section was handled exclusively by the employés of the Michigan Central Railroad Company, for which, as well as for the use of said section, said defendant paid said company a fixed compensation per hundredweight. Goods which came into the section from defendant's road, destined over the road of the Michigan Central Railroad Company, were, at the time of unloading from defendant's cars, deposited by said employés of the Michigan Central Railroad Company in a certain place in said section, from
401 which they were loaded into the cars of said latter company by said employés when they were ready to receive them; and, after they were so placed, the defendant's employés did not further handle said goods. Whenever the agent of the Michigan Central Railroad Company would see any goods deposited in the section of said freight building set apart for the use of the defendant, destined over the line of said Central railroad, he would call upon the agent of the defendant in said freight building, and, from a waybill exhibited to him by said agent, he would take a list of said goods, and would then, also, for the first time, learn their ultimate place of destination, together with the amount of freight charges due thereon; that from the information thus obtained from said waybill in the hands of the defendant's agent, a waybill would be made out by the Michigan Central Railroad Company for the transportation of said goods over its line of railway, and not before.

"These goods were, on the 17th of October, 1865, taken from the cars and deposited in the apartment of said building used as aforesaid by the defendant, in the place assigned as aforesaid for goods so destined.

"At the time the goods in question were forwarded from Montreal, in accordance with the usage in such cases, a waybill was then made out in duplicate, on which was entered a list of said goods, the names of the consignees, the place to which the goods were consigned, and the amount of charges against them from Liverpool to Detroit. One of these waybills was given to the conductor who had charge of the train containing the goods, and the other was forwarded to the agent of the defendant in Detroit. On arrival of the goods at Detroit the conductor delivered his copy of said waybill to the checking clerk of defendant in said section, from which said clerk checked said goods from the cars into said section. It was the practice of the Michigan Central Railroad Company, before forwarding such goods, to take from said waybill in the custody of said checking clerk, in the manner aforesaid, the place of destination and a list of said goods and the amount of accumulated charges, and to collect the same, together with its own charges, of the connecting carrier."

It will be seen from the foregoing statement that on the course of dealing between the two carriers shipping directions had not been received by the connecting carrier. The court mentions the
402 mark on the goods, but not as a controlling factor in the decision. The Michigan Central Railroad Company did not look at the marks on the goods for the shipping directions upon

which it acted. Under the mode of dealing between the two carriers the case was the same as though there had been no marks on the packages. The goods were on the platform of the connecting carrier at the time of the loss. The defendant did not own or have any possessory right over that portion of the connecting carrier's station-house. Defendant's servants were not privileged either to unload the goods there or to handle the goods afterwards. The servants of the connecting carrier placed all goods which were to be forwarded as designated by the agent of the defendant at a particular locality on the platform in question. The defendant ceased to be and the connecting carrier became the bailee of the goods—and this before the shipping directions had been given by the one carrier to the other according to the understood mode of dealing between them. This was a case in which the defendant did not own or possess the unloading platform. If the defendant had owned or possessed that section of the station where the goods were unloaded, the mere placing the goods in controversy at a particular locality on the platform from which the servants of the connecting carrier would afterwards without special license from the defendant take them, would not have changed the custody of such goods. The law upon this point is clear. Nor would the connecting carrier have become bailee even if its agent had received the shipping directions before the destruction of the goods. The fact that the goods were still in the custody of the defendant would from the standpoint of the shipper have determined the matter. I may add that the Grand Trunk Railway Company had no terminal, that is to say unloading, facilities at Detroit so far as concerned the owner of the goods in question. The section of the station in which the freight of the Grand Trunk Railway Company was unloaded, was owned and possessed by the connecting carrier. In the case at bar the connecting carrier not only took exclusive possession of the cars in controversy at the terminus of appellant's rails but hauled them to a point on its own rails to which appellant had, neither in law nor by contract, even a right of access.

In Conkey v. The Milwaukee & St. Paul Railway Company, 31 Wis., 619, the defendant carried goods marked with the name of the consignee and with the place of destination, "Preston, Minn., via La Crosse & Lanesboro," from Milwaukee to La Crosse and there unloaded the same into its own station or freight-house. From the latter point the goods were to be taken by the connecting
403 carrier, the Southern Minnesota Railroad Company. These goods were deposited upon a certain portion of defendant's premises from which, according to the course of business between the two carriers, the connecting carrier would take them without further notice or request. So far as appeared the connecting carrier, knowing that the goods so placed were for transit over its road, looked only to the marks on such goods for further shipping directions. The connecting carrier failed to remove the goods in question and they were destroyed by fire. The court ruled that defendant was still the bailee for carriage and so answerable to the owner for the loss. In this case there was no lack of shipping direc-

tions, and on the course of dealing between the two carriers the defendant would not again have handled the goods. But they were still on defendant's premises; the custody or possession in fact had not passed to the connecting carrier.

In Mount Vernon Company *v.* Ala. Gt. Southern Railroad Company, 92 Ala., 296, the place of junction between the connecting carriers was Attalla. The car in question was laden with cotton brought to Attalla over defendant's road and there placed by defendant's servants on a side track belonging to the connecting carrier whence the latter was expected to move it on towards the place of ultimate destination. No notice of this was given to the connecting carrier and the car while so placed was destroyed by fire. Defendant undertook unsuccessfully to prove that by a course of dealing between itself and the connecting carrier, the latter was accustomed to receive on said side track and haul over its rails to the Chattanooga Compress cars laden with cotton and there await the waybill or ultimate shipping directions. The court was evidently of opinion that if the car in question had been so taken and hauled to the Chattanooga Compress it would have been delivered, but suggested that such a course of dealing would have been tantamount to a shipping direction to the connecting carrier to haul the car as far, at least, as the Chattanooga Compress. So in the case at bar the Terminal Association knew that each of the cars in controversy was to be hauled over its own rails in any case as far as to the place of loss. For that much of the transit over the rails of the Terminal Association no special shipping directions were needed; and whether that company received, before or after the haul to the place of loss, the waybill indicating the ultimate destination of the car, was, on its peculiar method of business, and course of dealing with appellant, an immaterial matter.

From the ruling of this court that appellant must be held
404 for the loss of the car numbered 1004 consigned to Birmingham I dissent. I concur in the conclusion that the decree against appellant as to the barley and the destroyed cars be reversed.

It is ordered by the court that the decree in case 454 be affirmed, and that the decrees in the other cases numbered 442, 452 and 453 in favor, respectively, of the Chicago, Milwaukee & St. Paul Railway Company, Jacob Rau and the Huntting Elevator Company, be reversed and the causes remanded with direction in each case to dismiss the petition.

405 And afterwards, on the same day, to wit: on the twenty-fifth day of February, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Decree. Entered Feb. 25, 1898.

FRIDAY, *February* 25, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL. } 452.

In the matter of the intervening petition of Jacob Rau.

C. H. BOSWORTH, Receiver, etc.,
vs.
JACOB RAU.

Appeal from the circuit court of the United States for the southern district of Illinois.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Illinois and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed, by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby reversed, with costs; and that this cause be, and the same is hereby remanded to the said circuit court with directions to dismiss the petition.

406 And afterwards, to wit, on the second day of March, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Order of March 2, 1898.

WEDNESDAY, *March* 2, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY. } 452.

In the matter of the intervening petition of Jacob Rau.

Upon application of counsel for appellee, it is now here ordered that mandate in this cause do not issue in accordance with the provisions of rule 27 of this court, but that the same be and is hereby stayed, until further order of this court.

407 And afterwards, to wit: on the twenty-second day of March, 1898, in the October term last aforesaid, came the appellee,

by his counsel, Mr. George R. Peck, Mr. Burton Hanson and Mr. George P. Cary, and filed in the clerk's office of said court his petition for rehearing, which said petition was in the words and figures following, to wit:

Petition for Rehearing. Filed March 22, 1898.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

THE MERCANTILE TRUST COMPANY, Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL., Defendants.

In the matter of the intervening petitions of the Chicago, Milwaukee & St. Paul Railway Company, the Huntting Elevator Company, and Jacob Rau.

C. H. BOSWORTH, Receiver, Appellant,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellee. } No. 442.

C. H. BOSWORTH, Receiver, Appellant,
vs.
JACOB RAU, Appellee. } No. 452.

C. H. BOSWORTH, Receiver, Appellant,
vs.
THE HUNTTING ELEVATOR COMPANY, Appellee. } No. 453.

Petition for rehearing.

And now comes The Chicago, Milwaukee & St. Paul Railway Company, The Huntting Elevator Company and Jacob Rau,
408 appellees and intervenors above named, and pray the court to grant a rehearing in these causes for the reasons stated in the brief and argument appended to this petition.

GEO. R. PECK,
BURTON HANSON,
GEORGE P. CARY,
Counsel for Appellees.

And afterwards, to wit: on the first day of April, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Petition for Rehearing Overruled, April 1, 1898.

MONDAY, *April* 1, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

C. H. BOSWORTH, Receiver,
vs.
JACOB RAU, Intervenor. } 452.

Appeal from the circuit court of the United States for the southern district of Illinois.

It is ordered by the court that petition for rehearing in this cause be, and the same is hereby overruled.

409 *Certificate of Clerk.*

United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 408, inclusive, contain a true copy of the transcript of record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of Mercantile Trust Company *vs.* Chicago, Peoria and St. Louis Railway Company, in the matter of the intervening petition of Jacob Rau,— C. H. Bosworth, receiver, appellant, *vs.* Jacob Rau, appellee, No. 452, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 16th day of April, A. D. 1898.

[SEAL.] OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

410 United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 409, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit, in the case of Mercantile Trust Company *vs.* Chicago, Peoria & St. Louis Railway Company, in the matter of the intervening petition of Jacob Rau,— C. H. Bosworth, receiver, appellant, *vs.* Jacob Rau, appellee, No. 452, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 18th day of April, A. D. 1898.

OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

411 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which C. H. Bosworth, as receiver of the Chicago, Peoria & St. Louis Railway Company, and The Chicago, Peoria & St. Louis Railway Company are appellants and Jacob Rau is appellee, No. 452, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into
412 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

413 UNITED STATES OF AMERICA, *Seventh Circuit,* } *ss:*

In obedience to the command of the foregoing writ of certiorari, and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company, and The Chicago, Peoria & St. Louis Railway Company, appellants, and Jacob Rau, appellee, is a full, true, and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals for the seventh circuit, together with all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 18th day of May, A. D. 1898.

OLIVER T. MORTON,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

414 [Endorsed:] Case No. 16,858. Supreme Court of the United States. No. 285, October term, 1898. Jacob Rau *vs.* C. H. Bosworth, rec'r, &c. Writ of certiorari & return. Filed May 18, 1898. Oliver T. Morton, clerk. Office Supreme Court U. S. Filed May 26, 1898. James H. McKenney, clerk.

415 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL.

In the matter of the intervening petition of Jacob Rau.

C. H. BOSWORTH, Receiver, etc., Appellant,
vs.
JACOB RAU, Appellee.

It is stipulated by and between the parties hereto by their respective counsel that the certified copy of the transcript of record filed by the clerk of this court in the Supreme Court of the United States in the application there made for a writ of certiorari in the above-entitled cause there entitled Jacob Rau *vs.* C. H. Bosworth, receiver, &c., No. 645, all to the October term, 1897, of said court, shall be taken as the return to said writ of certiorari granted by said Supreme Court in said cause on the 10th day of May, A. D. 1898.

Dated May 16, 1898.

GEO. R. PECK,
BURTON HANSON,
Solicitors for Jacob Rau.
BLUFORD WILSON,
PHILIP BA-TON WARREN,
Solicitors for C. H. Bosworth, Receiver.

Endorsed: United States circuit court of appeals, seventh circuit. Mercantile Trust Company *vs.* Chicago, Peoria & St. Louis Railway Company. In the matter of the intervening petition of Jacob Rau. C. H. Bosworth, receiver, etc., appellant, *vs.* Jacob Rau, appellee. Stipulation. Filed May 18, 1898. Oliver T. Morton, clerk.

Endorsed on cover: Case No. 16,858. U. S. C. C. of appeals, 7th circuit. Term No., 285. Jacob Rau, petitioner, *vs.* C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company, and The Chicago, Peoria & St. Louis Railway Company. Filed April 26, 1898.